Pleas and proceedings before the Honorable the Judges of the Circuit Court of the United States, in and for the eastern district of Pennsylvania, in No. 5 of October session, 1857, of said court.—In Admiralty.

It is thus contained:

Pleas and proceedings before the Honorable John K. Kane, Judge of the District Court of the United States, in and for the eastern district of Pennsylvania.—In Admiralty.

Be it remembered, that on the fourteenth day of December, A. D. 1855, Benjamin Gerhard and Robert P. Kane, esquires, proctors in said court, appear in open court, and present the libel and complaint of Michael Molloy, jr., against the steamship Palmetto, in a cause of collision, civil and maritime; and the same being read and filed, is in the words following, to wit:

In the District Court of the U. S., in and for the E. D. of Penn.—In Admiralty.

MOLLOY vs. THE PALMETTO. } Libel.

To the Honorable John K. Kane, Judge of the District Court of the United States in and for the eastern district of Pennsylvania:

In Admiralty.

The libel and complaint of Michael Molloy, junior, of the city of Philadelphia, in the district aforesaid, against the steamship Palmetto, whereof ——— Baker now is, or late was master, her tackle, apparel and furniture, and against the said ——— Baker, the master thereof, and against all persons lawfully intervening, for their interests therein, in a case of collision, civil and maritime, and thereupon the said Michael Molloy, junior, alleges and articulately propounds as follows:

1. First. That the libellant, before and at the time of the collision hereinafter named, was the owner of the steam-tug Bird, a tow-boat employed in the river Delaware, of the burthen of forty tons or thereabouts.

2. Second. That on Saturday, the first day of December, 1855, about 10 o'clock of the forenoon, the steam-tug Bird left Spruce street wharf, in the port of Philadelphia, bound down the river Delaware in search of an oyster vessel, for the towage of which she had been engaged; that the steam-tug had on board four persons: one James Wilson, the master and pilot, Harman Seeley, the

engineer, Cornelius O'Donahue, the fireman, and a man named William C. Gilligham, who was on board at the request of the said Wilson, the master, for the purpose of pointing out the oyster vessel.

That the day was clear, a light wind blowing from the southward and westward, with an ebb tide, which, at the time of the departure of the tug, had been running about an hour.

That when the steam-tug was nearly opposite the navy yard, the steamship Palmetto, a sea-going steamer of the burthen of seven hundred and fifteen tons or thereabouts, was observed hauling out of her dock at Pine street wharf; and in a few minutes, getting under way, she proceeded down the river Delaware in the same direction as the steam-tug Bird, and bound on her regular trip to the city of Boston.

That both of the vessels continued their course down the river as far as the town of Gloucester, the steam-tug being some six hundred yards, or thereabouts, ahead of the steamship.

That the eastern shore of the river Delaware, immediately below Gloucester, takes a horse-shoe curve, extending from Gloucester to Eagle Point, and that the steam-tug Bird, passing Gloucester, held her course across this horse-shoe curve, which she was enabled to do by reason of her light draught of water;

But that the steamer Palmetto, after passing Gloucester, avoided the shoal water, and keeping the channel-way held her course to the eastward, following the curve of the river.

That the tide being favorable for vessels bound down the river, the steamship was moving at the rate of some twelve miles an hour, and the steam-tug was making about ten.

That when nearly opposite Eagle Point, the steamship passed the buoy, and shaped her course to the westward, bearing down towards the steam tug Bird, which was, at that time, on the westward or Pennsylvania side of the channel.

That the hands on board of the steam-tug, seeing the steamship approaching them in such a way as to peril their safety, hailed those on board of the steamship to steer clear of them, and kept their own vessel to the westward. That the two vessels were, at this time, nearly opposite the Buttermilk Tavern. That the steamship Palmetto held her course and ran into the steam-tug Bird, striking her on her larboard side, a little abaft the engine-house, cutting through her plank shear and rail with such violence as to fling her partly across the bows of the steamship, and turn her bottom up yards. That the steam-tug filled with great rapidity, so that she sank almost immediately, those on board of her, with the exception of Gillingham, who clung to the bobstays of the steamship, being thrown into the water.

That Cornelius O'Donahue, the fireman, was drowned, and that the others escaped with difficulty.

That the steam-tug, in holding the course which she did, acted

in conformity to the law of the river, and that by keeping to the westward she did all in her power to avoid the collision which occurred.

That it was in the power of the steamship, by slightly shifting her helm, to have kept clear of the steam-tug, which the said steamship failed to do, although she had both room and depth of water sufficient so to have done, and that the said collision was caused by the gross and criminal negligence of those having charge of the said steamship.

3. Third. That at the time of the collision hereinbefore alleged, the steam-tug Bird was a tight, staunch, and well-built vessel, and that she was worth the sum of four thousand dollars, and that by the sinking thereof the same hath been totally lost to this libellant, and that the entire damage incurred by him in consequence of the collision aforesaid is estimated at five thousand dollars.

4. Fourth. That the said steamboat Palmetto is now within the eastern district of Pennsylvania.

5. Fifth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of this honorable court, in verification whereof, it denied, he craves leave to refer to the depositions and other proofs to be by him exhibited in this cause.

Wherefore the libellant prays, that process in due form of law, according to the course of this honorable court in causes of admiralty and maritime jurisdiction, may issue against the said steamship Palmetto, her tackle, apparel, and furniture; and also that the said —— Baker, the master thereof, and all persons having, or pretending to have, any interest therein, may be cited to appear and answer the matters so articulately propounded; and that it would please this honorable court to pronounce for the damage aforesaid, with costs, and to make such other and further decree in the premises as to law and justice may appertain.

MICHAEL MOLLOY, SEN'R,
For MICHAEL MOLLOY, JUN'R.

BENJAMIN GERHARD,
ROBERT P. KANE,
Proctors for Libellant.

UNITED STATES,
Eastern District of Pennsylvania, sct.

On this fourteenth day of December, A. D. 1855, before me, Charles F. Heazlitt, a commissioner appointed by the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, under the laws of the United States, to take affidavits and acknowledgments of bail, &c., personally appeared Michael Molloy, sr., who being duly sworn, did depose and say, that he is the agent of the said libellant, specially instructed as to the facts of the case; that he has read the foregoing libel, and

knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be on his information and belief, and as to those matters he believes it to be true.

CHARLES F. HEAZLITT,
United States Commissioner.

In the District Court of the United States in and for the eastern district of Pennsylvania.—In Admiralty.

And now, December 14th, 1855, the said libel of complaint is in open court presented by B. Gerhard and R. P. Kane, esquires, the proctors for the libellant; and thereupon, the court having considered of the same, it is ordered and decreed, that process of law do issue according to the prayer of the said libellant in said libel of complainant set forth and contained, on compliance on his part with the rules of court in that behalf established, and that the stipulation on the part of the impugnant, if such there shall be, be taken in the sum of six thousand dollars, to answer, abide by, fulfil, perform, and pay, etc., according to the law and practice of this court.

J. K. KANE,
Judge Dist. Court U. S. E. D. Penn'a.

And stipulation for costs, being filed sec. req., is in the words following, to wit:

UNITED STATES,
Eastern District of Pennsylvania.

On this fourteenth day of December, A. D. 1855, and in the eightieth year of the independence of the said United States, in open district court of the United States, personally appeared Michael Molloy, sen'r, and by stipulation in due course of law acknowledged himself to be indebted to the United States of America, for the use of all persons who may be interested in the premises, in the sum of two hundred and fifty dollars, to be levied of his goods and chattels, lands and tenements, on condition that if the libellant in the above action shall pay all costs which by the decree, mandate, or practice of the court, he may become liable to pay, then this stipulation to be void and of no effect, otherwise to be and remain in full force and virtue; and execution to issue thereon forthwith, for the amount of such costs, at the instance of any person interested as aforesaid.

MICHAEL MOLLOY.

Taken, acknowledged, and subscribed this 14th day of December, A. D. 1855, in open court.

THOMAS L. KANE,
Clerk Dist. Court.

And thereupon process is issued in the words following, to wit:

[SEAL.] UNITED STATES,
Eastern District of Pennsylvania, sct.

John K. Kane, Judge of the District Court of the United States in and for the eastern district of Pennsylvania, to the Marshal of the same district, greeting:

You are hereby commanded, in the name and by the authority of the United States, forthwith to seize and attach the steamship or vessel called the Palmetto, Baker, now or late master, together with all and singular her tackle, apparel and furniture, as the same now are, and the same safely keep to abide the final order and decree of this court, in a certain plea, civil and maritime, herein prosecuted against the said steamship, &c., by Michael Molloy, jr., owner of the steam-tug Bird, libellant for collision, &c. And you are further commanded, in the name and by the authority aforesaid, to cite and admonish the said master, and generally all others herein concerned, so that they be and appear before me at a special session of this court, to be holden at the room of the district court of the United States, in the city of Philadelphia, on the fourth day of January next, at eleven o'clock in the forenoon of the same day, then and there to show cause, if any they have, why the said steamship, &c., should not be condemned, &c., for the payment of the damages, &c. &c., and have you then and there this writ.

Given under the seal of the said court, at Philadelphia, this fourteenth day of December, A. D. 1855, and in the eightieth year of the independence of the United States.

THOMAS L. KANE,
Clerk Dist. Court.

On which said fourth day of January, A. D. 1856, being the day of the return of the said writ, the said marshal makes return thereof in the words following, to wit:

December 14, 1855.

Served the within writ by reading the same to the first officer on board of said steamship, and by affixing a copy of the same to her mainmast.

So answers,

F. M. WYNKOOP,
U. S. Marshal.
Per GEO. WYNKOOP,
U. S. Dep. Marshal.

Afterwards, to wit, on the 15th day of December, A. D. 1855, a claim is made and presented in the words following, to wit:

And now Henry Winsor, part owner and consignee, intervening for the interest of himself, and of Edward Whitney and Alfred

Winsor, trading as Sprague, Soule & Co., of William Sprague, Edward S. Tobey and of Obed Baker, as owners of the said steamship Palmetto, appears before the honorable court, and makes claim to the said steamship, her tackle, apparel and furniture, as the same are attached by the marshal under process of this court, at the instance of Michael Molloy, jr., and the said Henry Winsor avers that he was in possession of the said steamship at the time of the attachment thereof, and that the persons above named are the true and bona fide owners of the said steamship, and that no other person is the owner thereof, and the said Obed Baker is master of the said steamship, and the true and lawful bailee thereof, for the said owners; whereupon he prays to be admitted to defend accordingly.

HENRY WINSOR.

Sworn and subscribed in open court, this 15th day of December, A. D. 1855.

THOMAS L. KANE,
Clerk District Court.

And thereupon, stipulation is entered into in the words following, to wit:

UNITED STATES,
Eastern District of Pennsylvania.

Be it remembered, that at a special district court of the United States, holden at Philadelphia, in and for the eastern district of Pennsylvania, on the fifteenth day of December, A. D. 1855, and in the eightieth year of the independence of the said United States, before the Honorable John K. Kane, judge of said court, come Henry Winsor and James N. Sprague, who freely and voluntarily submitting themselves to the jurisdiction of the court, acknowledge themselves to be jointly and severally indebted unto Michael Molloy, jr., in the sum of six thousand dollars, lawful money of the United States, to be levied of the goods and chattels, lands and tenements of the said Henry and James N., to the use of the said Michael Molloy, jr., upon condition, that whereas a suit is now pending in the said court for collision, wherein the said Michael Molloy, jr., is the libellant, against the steamship Palmetto, Baker master, Henry Winsor, and others, claimants; now if the said claimants shall well and truly abide by all orders, interlocutory or final, of the said court, and of any appellate court in which the said suit may hereafter be depending, and shall fulfil and perform the judgment or decree which may be rendered in the premises, and also pay all such costs and charges as shall be ordered and adjudged to be paid on their part, then this stipulation shall be void, otherwise in force, and execution may

issue by virtue thereof, at one and the same time, against any or all the parties to this stipulation.

HENRY WINSOR,
J. *H.* SPRAGUE.

Taken, acknowledged, and subscribed in open court on the day and year above written.

THOMAS L. KANE,
Clerk Dist. Co.

The above named J. N. Sprague, being duly sworn, deposes and says, that he is permanently a householder within the district, and that he is worth the sum of six thousand dollars, after payment of his just debts and liabilities.

And thereupon, it is ordered that *that* a writ of restitution issue to the marshal, directing him to restore the said steamer to the said claimant, upon payment to him of his costs, and the necessary expenses by him incurred; which said writ of restitution being issued, is in the words following, to wit:

[L. S.] UNITED STATES,
Eastern District of Pennsylvania.

John K. Kane, Judge of the District Court of the United States, in and for the eastern district of Pennsylvania, to the Marshal of the same district, greeting:

You are hereby commanded to deliver and restore unto Henry Winsor, the steamer or vessel called the Palmetto, with her tackle, apparel, and furniture, or so much thereof as was lately and is now in your custody and possession by virtue of a writ of attachment lately issued out of said court at the suit of Michael Molloy, jr., libellant, for collision, and how you shall have executed this writ make a return to me at a special session of said court, to be holden at the city of Philadelphia, on the twenty-second day of December instant, and have you then and there this writ.

Given under the seal of said court, at Philadelphia, this fifteenth day of December, A. D. 1855, and in the eightieth year of the independence of the said United States.

THOMAS L. KANE,
Clerk Dist. Ct. U. S.

On which said twenty-second day of December, A. D. 1855, being the day of the return of said writ, the said marshal makes return thereof in the words following, to wit:

I have restored the steamship Palmetto to Henry Winsor, as by the within writ I was commanded. So answers,

F. M. WYNKOOP,
U. S. M. E. D. Penn'a.
Per GEO. WYNKOOP,
U. S. Dep'ty M'l.

Afterwards, to wit, on the twenty-eighth day of December, A. D. 1855, Morton P. Henry and St. Geo. T. Campbell, esquires, proctors of said court, also appear in said court, and present the answer of Henry Winsor, intervening for himself and others, to the libel aforesaid, which being read and filed, is in the words following, to wit:

To the Honorable John K. Kane, Judge of the District Court of the United States, for the eastern district of Pennsylvania:

Sitting in Admiralty.

The answer of Henry Winsor, intervening for the interest of himself and of Edward Whitney and Alfred Winsor, trading as Sprague, Soule & Company, of William Sprague, Edward S. Tobey, and of Obed Baker, alleges and propounds as follows:

1st. That the said steam-tug Bird was, at the time of the said collision, a tow-boat, employed in the river Delaware, of the burden of forty tons or thereabout; but whether the said libellant was at the said time the owner thereof, this respondent knows not, and therefore neither admits nor denies the same, but leaves the same to be duly proved to the satisfaction of this honorable court.

2d. That true it is that the steam-tug Bird did leave Spruce street wharf, in the port of Philadelphia, and proceed down the river Delaware on the forenoon of Saturday, December 1st, 1855, but whether at the time, and for the purpose and object in the said libel alleged, this respondent knows not, and therefore neither admits nor denies, but leaves the same to be *be* duly proven to the satisfaction of this honorable court. That there was on board the said steam-tug four persons, whom this respondent believes to have been named as in the said libel alleged; that the day, wind, and tide, were as in said article alleged, except that what wind there was, was from the southward and eastward; that the steamship Palmetto is a vessel of the description therein alleged, and on the morning of that day did proceed from Pine street wharf down the river Delaware on her voyage to Boston, in which direction the said steam-tug had preceded her, but whether the said steam-tug was nearly opposite the navy yard at the time the said steamship was hauling out of her wharf, this respondent knows not, and therefore neither admits nor denies, but leaves the same to be proved to the satisfaction of this honorable court.

That both said vessels proceeded down the river as far as the town of Gloucester, but whether at the said town of Gloucester the said steam-tug Bird was six hundred yards ahead of the Palmetto this respondent knows not, and therefore neither admits nor denies, but leaves the same to be proved to the satisfaction of this honorable court.

That the eastern shore of the river Delaware, immediately below

Gloucester, takes a horse-shoe curve, extending from Gloucester to Eagle Point; that the said steam-tug Bird, passing Gloucester, held her course across the Horse-shoe shoal, just below Gloucester Point, which she was enabled to do by reason of her light draught of water, and keeping out of the channel, and on the westward side of the river; that the said steamship Palmetto, after passing Gloucester Point, avoided the shoal water, and, keeping the channel-way, held her course to the eastward, following the curve of the channel of the river, which she was obliged to keep by reason of her draught of water, which was eighteen feet at that time.

That the tide was favorable for vessels going down the river, and that the said steamship was moving at the rate of about ten miles and a half an hour, and that the said steam-tug was moving at the rate of about nine miles and a half, the steamship Palmetto running about one mile an hour faster than the steam-tug; but, by reason of the said steam-tug starting before the Palmetto, and by reason of the shorter course the said steam-tug took across the Horse-shoe shoal, the said steam-tug continued ahead of the said steamship, until and at the time of the happening of the collision.

That the said steamship passed to the eastward of the buoy at the eastern extremity of the shoal, and then shaped her course for the piers on League island, which course she held for three or four minutes, and then straightened her course down the river direct for Fort Mifflin, but not bearing at that time towards the Bird, which was then off the starboard bow of the steamship Palmetto, well to the westward, and ahead, and running in a line nearly parallel with that of the said steamship Palmetto, but somewhat approaching, but not in such a manner as in any way to endanger a collision.

That the said steamship held this last course for the space of about eight or nine minutes; that when nearly abreast of the Buttermilk Tavern, the steam-tug Bird was observed coming down fast towards the Palmetto; she kept that course until a short distance off the starboard cat-head of the Palmetto, when she altered her course more down the river, in the same direction with, but somewhat approaching, the Palmetto, but far enough off the starboard bow of the steamer to render that course perfectly safe; that she continued that course for a short time, when the course of the steam-tug bringing her still closer to the bows of the Palmetto, the pilot of the Palmetto warned the pilot of the steam-tug; that the steam-tug then suddenly altered her course to the eastward, right across the bows of the Palmetto.

That the steamship Palmetto immediately stopped and reversed the engines, but that the steam-tug continued her course, and was struck by steamship about fifteen feet forward of the stern, when

she immediately turned over, filled, and sunk, as in said libel alleged.

That one of the hands on board the steam-tug, named Seeley, who clung to the boat-stays of the steamer, whom this respondent believes to have been the engineer on board said Bird, exclaimed, as he was passing over the bows of the said steamship, "I told him not to do it," meaning that the pilot of the steam-tug had been warned not to cross the bows of the said steamship, and that two persons aboard said steam-tug were seen to warn the pilot of the steam-tug just previously to the collision.

That this respondent does not know, and therefore neither admits nor denies, whether the hands on board of the steam-tug hailed those on board of the steamship to steer clear of them, as in said libel alleged, but he leaves the same to be proved to the satisfaction of this honorable court, but he denies that they kept their own vessel, viz: the steam-tug, to the westward as therein alleged.

That the said fireman was drowned, and that the others escaped.

That when the pilot of the steamship first perceived the alteration of the course of the steam-tug Bird, he could not have done otherwise than he did for the following reasons:

That, to within one minute of the actual occurrence of the collision, there was no danger, nor any appearance of such, that a reasonable man could anticipate.

That the said steamship Palmetto is a long vessel, and consequently requires greater time to alter her course than the steam-tug, which was well known on board of the steam-tug Bird, which is employed in the towage of vessels, and was or ought to be manned by men accustomed to the water.

At the time when the course of the steam-tug Bird rendered a collision imminent, a schooner was lying at anchor in the stream, which the Palmetto was steering to the westward of, and about one hundred and twenty yards ahead of the Palmetto, on her larboard bow; any attempt, at the time the steam-tug altered her course, so as to cross the bow of the Palmetto, to have altered the course of the steamship to the eastward, would have brought her in collision with the schooner, as that space, with the tide running in favor of the steamship, would not have been sufficient to allow the steamship to alter her course so as to pass to the eastward of the schooner; the only course left to the steamship was to stop and reverse the engine, which was accordingly done before the collision occurred, and efforts were then made to save the lives of those who were then in the water.

And this respondent denies that it was in the power of the steamship by slightly shifting her helm to have kept clear of the steam-tug, or that any means were omitted on board of the Pal-

metto to avoid the collision that could have been taken, or that there was room for the Palmetto to have altered her course to the eastward, although the depth of water was sufficient to allow her to do so.

That the said collision was caused solely and exclusively by the gross and criminal negligence of those having charge of the said steam-tug Bird, in attempting to cross under the bows of the Palmetto.

3. And this respondent knows not, and therefore neither admits nor denies, that the steam-tug Bird was at the time of the collision a tight, staunch, and well built vessel, but leaves the same to be duly proved to the satisfaction of this honorable court. But this respondent denies that the said steam-tug Bird was at the time of the said collision worth the sum of four thousand dollars, or that the said steam-tug was by reason thereof totally lost to the said libellant, or that the entire damage incurred by libellant can be estimated at the sum of five thousand dollars.

That all and singular the premises are true; wherefore the respondent prays that this honorable court would be pleased to pronounce against the libel aforesaid, and to condemn the libellant in costs, and otherwise right and justice to administer in the premises.

HENRY WINSOR,
For Self and other Owners.

MORTON P. HENRY,
ST. GEO. T. CAMPBELL,
For Respondents.

UNITED STATES,
Eastern District of Pennsylvania, sct.

On this twenty-eighth day of December, A. D. 1855, before me, Charles F. Heazlitt, a commissioner appointed by the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, under the laws of the United States, to take affidavits and acknowledgments of bail, &c., personally appeared Henry Winsor, who being duly sworn, did depose and say, that he has read the foregoing answer, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be on his information and belief, and as to those matters he believes it to be true.

CHAS. F. HEAZLITT,
U. S. Comm'r.

In the District Court of the U. S. in and for the E. D. of Penn'a.—
In Admiralty.

MOLLOY
vs.
THE STEAMER PALMETTO. } Collision.

Depositions of witnesses on behalf of the tug "Bird," before Charles F. Heazlitt, United States commissioner, January 1, 1856.

Mr. Gerhard and Mr. Lowber, for tug; Mr. Johnston and Mr. Henry, for respondent.

Written interrogatories waived by consent.

Isaac Manks, being duly sworn, says:

I am forty-six years old and upwards; by occupation a waterman; have been coasting; have been on the sea and on the water about two years. I was on board the tow-boat called the Cape; she belongs to Sowers and Cooley; she was coming up the river, from the mouth of the Schuylkill, with a tow, at the time of the collision, December 1, 1855. It was on a Saturday, somewhere near 12 o'clock. I saw the collision between the Palmetto and the tug Bird. The tug sank immediately from the effects of the collision; she was torn to pieces some. I saw the pilot-house torn to pieces, and the engine-room was torn off. The collision took place a little above Red Bank; I saw them about ten minutes before the collision. We was on the western side of the channel heading up; the Palmetto was just below the Horse-shoe when I saw her first, and when the collision took place she was just above Red Bank. The Palmetto was nearly in the ship-channel, I should think, heading down; the Bird was just ahead of her on the western side of the channel, bearing westerly.

When I saw the steamship, just before the collision, she was in the ship channel; she steered westerly after I saw her, and when she came in collision with the Bird she was on the west side of the channel, or westerly of the channel. On the west side of the channel, the Bird was bearing westerly when she was struck on the larboard quarter. I thought the Bird was trying to get out of the way; that was my impression at the time. I thought it was no better than wilful murder myself on the part of the Palmetto; I was very much excited, and so was the captain. I couldn't help but see it—I was forward. I saw the steamboat Star take up a man. I saw some men in a boat, I don't know who they were, take the pilot of the Bird from the ruins of the pilot-house. I think his name was Jim Wilson; he was nearly drowned. The steamship went on, without slacking up but very little, for some distance. I saw the engineer of the Bird hanging on to the bobstay of the Palmetto; they didn't notice him, or go to his assistance, till they had gone some distance; then I looked back and

saw them taking him in with a rope. I believe that is about all the particulars.

I don't think we were over one hundred yards—nearly alongside, but very near. We sheered in right alongside of the ruins, and saw them take up Jim Wilson.

There was nothing in the way of the Palmetto when she altered her course. There was nothing near except ourselves and a schooner at anchor, that was not very near, not so near as we were ourselves. It was my impression at the time that it was wilful, and I felt very much aggravated indeed against the pilot or captain of the ship. I never spoke to Captain Molloy till yesterday afternoon; I had no acquaintance with him. I had no acquaintance with those on the Bird, only to see them as we passed.

Cross-examined by Mr. Henry.

I have been somewhat acquainted with Jim Wilson; known him on the boat; had no personal acquaintance with him; knew him about a year by sight; knew him by sight when he went on one of Sloan's boats.

I have not seen him since the collision; I was asking this morning where he was. I saw him at the collision. I was steward on board the "Kate;" I am on the Decatur now as steward. The duty of steward is the same as ship's cook; on the Kate the galley is on deck. We have dinner on the Kate at 12 o'clock, when convenient—we had not had it that day; I was cooking it. The engine-room, aft cabin, and galley is all one—connected—partitions between, of course. The engine-room is forward—let's see (witness studies.) The engine-room is forward—no; I most forget. The fire-room is forward, the galley next, engine-room next, and the aft cabin next. I don't know what the tonnage of the Kate is; I never asked; I know what water she draws. I had been on board the Kate about two months. The floor of her galley is even with her deck; the galley and the other rooms are closed in—they are all one house on deck. I was in the tow-boat Wide Awake, towing to Albany, belonging to Mr. White. I was steward and cook on board of her, until she left for North Carolina.

I didn't see any other vessels, except the schooner, and the vessels coming in collision. I hardly noticed the schooner; she was at anchor a good ways off—some distance off, not in the way at all. The schooner was to the westward of the Palmetto, some above the mouth of the Schuylkill.

As you are going down towards the mouth of the Schuylkill, I call that west, or westerly.

We had two canal boats; on my word, I can't be positive; I know we had two boats; I don't know whether they were canal boats or not; we had two boats, I know, and I am not certain but what we had more; I never gave it a thought since. They were

lashed alongside, one on each side, and I am not certain but we had one astern.

We were in the river Delaware, when I first saw the vessels Bird and Palmetto. [We went to the westward of League island. I am not much of a waterman, but I am certain we went to the westward. I am a waterman, but have been steward, and get the course in that way.]

Q. Which channel did you go through, east or west of League island?

See answer in brackets.

Our boat was heading right up the river when I first saw them, on the western side of the ship channel, heading for the "Horse-shoe buoy." I was forward of the pilot-house; was out there when the collision took place. We were just about a little below Red Bank when I first saw them; somewhere about that place. It was about ten minutes after I first saw them, when the collision took place. When I first saw them, both of them were below the Horse-shoe. I saw them coming, but didn't take particular notice of them until the collision took place. I looked up and saw them at the time of the collision. The head of the Bird was down, bearing westerly towards the mouth of the Schuylkill. She was heading nearly towards us, rather to the westward of us, 'cause we was pretty well over on that side. She was to the westward of the Palmetto when I first saw her; to the westward of the ship channel. She was above us at the time of the collision, a very short distance, not over one hundred yards, I should think; we sheered right in alongside of the wreck. I saw the Bird alter her course; and my impression was, she was getting out of the way of the ship at the time, according to the direction she was in. She altered her course to the west. She altered her course about ten minutes before the collision. It was my impression she was bearing westerly at the time. She altered her course very little—not much; she altered her course some considerable before the collision took place. I did not see her shift her course during those ten minutes. When I first saw her, she was nearer to the Jersey shore than she was at the time of the collision. I recollect how the bow of the Bird headed when she went down—(sunk;) it was towards the western shore; towards the Schuylkill; she had swung round considerable when she was struck.

Which way did she swing round?

I see—I was mistaken there. She struck the pilot-house, and tore that off; and it is a hard matter to tell how she went, when she got under the water.

Which way did she swing, when she was yet above water?

Well, give me time to recollect. She swung her bow the opposite course from what I told you, when I come to think, she went down so quick.

Did she swing her bow towards the east, or west?

She swung her bow, when I come to think, towards the Jersey shore. I recollect seeing how her bow was heading at the moment of collision. She was heading westerly, or southwesterly, towards the Pennsylvania shore.

ISAAC MANKS.

Sworn to and subscribed, January 1, 1856.

CHAS. F. HEAZLITT,
United States Commissioner.

April 14, 1856.

James Wilson, being duly sworn, says:

I reside in John street, city of Philadelphia. I am a waterman; have been so ever since I have been a small boy. I am about 30 years of age. On the 1st December last I was pilot of the tug Bird; I had charge of the boat at that time. I know of the collision between the Palmetto and the Bird.

We left the wharf at about half-past 10 o'clock in the morning; I can't say positively the hour; it was ten, or half-past ten. I made a bargain at Spruce street to go down and fetch up an oyster boat from down the river; they wanted me to hurry down as soon as I could, and get the boat up right away. I then left the wharf; the tide was ebb; the wind was southerly and westerly—a light breeze. We were bound down; I went on down below the navy yard. I looked out, back behind me, and saw the Palmetto backing out at Pine street, laying across the river. I didn't notice her any more; I went on down. I think I cast my head around, when I was down opposite the Point House. I saw her coming down behind; that was all the notice I took of her. I took no more notice of her; I kept on down in my course; crossed inside the Horse-shoe, about two or three hundred yards inside of the buoy. I then straightened my course down, for the mouth of the Schuylkill; I never varied in my course after I went over the Horse-shoe. I kept a straight course for the mouth of the Schuylkill; I kept my course straight down; I didn't vary any, either way, for I saw nothing of the vessel I was bound after. I had a man going down with me to look for the vessel; he came to the pilot-house, and walked forward and aft, and about. I don't remember his name now. He says, "the Palmetto is bearing down on us very close." I looks out of the window back—the back window, glass windows, which were up. I wouldn't judge her to be more than the length of my boat off from us, aiming right for us; she (the Palmetto) was heading westerly. I then flung my helm "hard a-port;" that threw my head to the Pennsylvania shore. I kept my helm in that condition, "hard a-port," till she struck us; I saw no way to clear her but that. I judge the Palmetto was going about eleven knots; we were going about eight knots, with sixty

pounds of steam. I saw no way to save our lives but that; that is, porting the helm—I thought that would clear them. She struck us on the larboard quarter, aft the engine-room; a kind of glancing blow. She whirled us across her bows, and instantly turned us on our beam ends, when she commenced filling at her fire-room doors. She turned us clear over, bottom upwards; then the tug went right down, and all hands went overboard but the engineer, who caught the bobstay of the Palmetto. We were all in the river but the engineer. I thought when she was on her beam ends that the Palmetto was on her full speed; I didn't see that she stopped any. The pilot-house came off, and a little chest; one of the men caught the pilot-house and I caught the chest and got on to that. The Bird was under water—gone; one man drowned. The boat of the schooner lying at anchor picked up one of the men. The Palmetto's darkey man flung a line to me, and I ketched it as she passed by me. She dragged me through the water, and they undertook to hoist me up before she passed the schooner. They hadn't time to hoist me up before they passed the schooner; they hadn't slacked their speed; they were under full headway; and that shows they were under full speed when they struck us. The schooner was some distance from us. They had passed that schooner before they hauled me up. They said it would have mashed me, if they had attempted to haul me up. They rubbed against the schooner; the larboard side of the ship rubbed against the schooner all along. They pulled me up after they had passed the schooner; they pulled me on board when I was most exhausted. I could hardly stand alone, when they got me on board. I asked them if they would show me some place to go and warm myself; it shows me how they treated me. I left the Palmetto after I come to, so that I could stand; they took me ashore in their boat.

Cross-examined.

I am still in Mr. Molloy's employment. I was in his employment part of last season; and all of this season, since I have been able to work. I was captain and pilot of the Bird. I have had charge of several boats on the river; the Despatch, for Mr. T. E. Baxter; I was in his employment over a year. I had charge of the Sea Foam, owned by ——— Thompson, of Jersey. I used to go pilot of the Burlington, that big boat that runs up the river. I went pilot of the Rappahannock, that used to run to the Capes; I was second pilot of the John Stevens. I did not see the Palmetto after she crossed the Horse-shoe, before the last time I saw her. She was steering a westerly course. I know she was steering so, because we were both heading a westerly course.

Question. At the time you are speaking of, was she running pretty much the same course with the Bird?

Answer. Yes, sir, pretty much the same course.

Q. At the time you are now speaking of, what time are you now speaking of that she was running the same course?

A. Why, at the time the collision was taking place. I should judge the tug was drawing six feet six inches water, in that neighborhood; the tide was running down—ebb tide. I wouldn't judge the Bird to be going over eight knots with the tide.

I didn't look to see the Palmetto before the man, Gillingham, spoke to me; I didn't see her.

The Palmetto has a bowsprit.

When Gillingham spoke to me, I shouldn't think the Palmetto more than the length of the Bird from us.

Q. How did her stem range with your stern?

A. I should judge it was ranging nearly aft of us. I can't say precisely, but I should say, as near as I could judge, that it was right aft of us. The length of our boat was between our stern and the Palmetto.

I don't suppose it was a minute between the time Gillingham spoke to me and the collision—I wouldn't judge it was more than a minute. I instantly flung my helm a-port. I flung my head back, saw her, and immediately put my helm hard a-port, as far as it would go. I threw my whole weight on it, and held it there, until she was on her beam ends.

The Bird altered her course; she had to alter it when the wheel was flung hard a-port—that must come; but the speed of the ship was of so much more headway and power, we couldn't get away from her—her suction held us there. I don't believe the ship was stopped, till the Bird was sunk; if she had stopped, we could have got out of her way. I did not hear any hail from the Palmetto—there was no hail made that I ever heard. When I looked back, when Gillingham told me, I couldn't see a man on her.

I headed for the mouth of the Schuylkill, as near as I could come at it. We were running as near *as* straight as we could. I kept that course after I got over the Horse-shoe. I was not steering that course when opposite the buoy; it was then more to the westward—more westerly than easterly. After I got over the bar, I straightened my course down, as near as I could.

I could see out of both sides of my pilot-house—both forward and aft, and on the side. I didn't see the Palmetto going round the Horse-shoe, but she couldn't get down unless she went round.

The Bird steered very easy; she minded her helm first rate.

Two spokes of the wheel would alter her course one point; she would do that in half a second; instantly you move the rudder, she would vary.

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Two spokes of the wheel would alter her course one point; she would do that in half a second; instantly you move the rudder, she would vary.

I did not hear anybody on board my boat sing out, to hard a-port my helm.

Re-examined.

I first saw the Palmetto backing out of Pine street. I didn't see her any more until I got down to the Point house; she was then the biggest end of a mile behind us. I never saw her no more till Gillingham called my attention to her, just before the collision.

his
JAMES ⋈ WILSON.
mark.

Sworn to and subscribed, April 14th, 1856.

CHAS. F. HEAZLITT,
United States Commissioner.

In the District Court of the U. S. in and for the E. D. of Penn'a.—
In Admiralty.

MICHAEL MOLLOY
vs.
STEAMSHIP PALMETTO.

Depositions of witnesses on behalf of libellant, taken before Charles F. Heazlitt, U. S. Commissioner, at Philadelphia, January 10, 1856.

Mr. B. Gerhard and Mr. Kane, for libellant; Mr. M. P. Henry and Mr. Johnston, for defendants.

George Robinson, being duly sworn, says:

I am 53 years of age 29th of last May; by profession, a boatman; have followed the water from 30 to 35 years, in sail vessel and steamboats; of late, steamboats; I am now captain of the tug Kate. Before that, I was master of a vessel for 15 years. On the morning of the 1st December last I left here, and went round to the Schuylkill for a tow. I came out of the mouth of the Schuylkill about twenty minutes to 12 o'clock, with three boats in tow. I don't recollect their names, except one called McFadden; two were Schuylkill boats, and one was a Lehigh boat. The tide when I came out was two-thirds ebb; the wind was about S. W., light breeze, and day fair.

I saw a collision between the Bird and the Palmetto.

Immediately after leaving the mouth of the Schuylkill, coming up the river, my cook came to me, and asked me if I would take dinner. I replied that it was hardly 12 o'clock, and I would eat dinner at that time; it was early. I saw the Palmetto and the Bird after I came out from dinner. I was about one-third of the distance from the mouth of the Schuylkill to opposite Red Bank when I came out from my dinner. I first saw the Palmetto above

the Horse-shoe, heading down round the point of the Shoe; the tug was crossing the Horse-shoe, 200 yards inside the buoy, ahead of the Palmetto at that time. At the time I first saw the Palmetto, I suppose she was heading a S.W. course, that would run her ashore on the Jersey shore after she got down upon the buoy. The Bird, when I first saw her, was running direct for the mouth of the Schuylkill, right for me; we appeared to be running right for one another, as near as could be. I should suppose the general gait for the tug was full of 8 miles to the hour. The Palmetto was running from 2 to 3 miles an hour faster than the Bird. When I first saw the Palmetto she was on the Jersey side of the channel—that is, of the Bird; she was running near the ship channel down; the Bird had crossed the shoal, and was in a straight course right down for the mouth of the Schuylkill.

I saw the Palmetto after she got opposite Eagle Point change her course more northwestwardly, which would fetch her across the track of the Bird; that point would bear her to the lower end of League island. She did not alter her course again that I perceived until she struck the Bird. The Bird did not that I saw alter her course. I was steering directly for her. I was at the wheel the whole time after I eat my dinner.

These vessels were more than a mile from me when I first saw them; I should think, from recollection, they were some 300 yards from me at the time of collision; I did not charge my mind with it. The Palmetto struck the Bird on her larboard quarter. I saw it swing the Bird round; swing her stern round, bringing her bow round to larboard; turned her right over and sunk her; her pilot-house floated off. I didn't see any men in the water further than this: I saw a man climb up on the pilot-house. I wouldn't like to say it was a minute after the tug was struck before she sank; it was done very quick; there was a great deal of smoke and steam, and she went down.

At the time of the collision I should say the Palmetto was heading one point across the current towards the Pennsylvania shore. The Bird was heading very near with the current; it might have been a little southward of the current. I was in our pilot-house at the time of the collision at the wheel; had been there all the time since I came from dinner. A captain of the boat, McFadden, was standing at my right hand at the time of the collision. I was going about three miles through the current.

I saw a schooner at anchor; I don't recollect her name; she was lying in a direct line between me and the Bird, a little on my larboard hand; she was in about five fathom water in nearly a direct line between Red Bank and League island pier. I was about one-third of the distance from the mouth of the Schuylkill to the schooner when I first saw the Palmetto and the Bird. I was probably a little less than three hundred yards below the schooner at

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I saw the Palmetto after she got opposite Eagle Point change her course more northwestwardly, which would fetch her across the track of the Bird; that point would bear her to the lower end of League island. She did not alter her course again that I perceived until she struck the Bird. The Bird did not that I saw alter her course. I was steering directly for her. I was at the wheel the whole time after I eat my dinner.

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I saw a schooner at anchor; I don't recollect her name; she was lying in a direct line between me and the Bird, a little on my larboard hand; she was in about five fathom water in nearly a direct line between Red Bank and League island pier. I was about one-third of the distance from the mouth of the Schuylkill to the schooner when I first saw the Palmetto and the Bird. I was probably a little less than three hundred yards below the schooner at

the time of the collision; we were all pretty close together at the time.

After the collision the Palmetto passed that schooner on the Pennsylvania side. The schooner headed up the river. The Palmetto passed her not exceeding three feet from her, if it was that. The pilot-house of the Bird floated by the schooner from forty to fifty yards on the Jersey side.

At the time of the collision I could see one-half of the length of the Palmetto on the Jersey side of the schooner at anchor. I was astern of that schooner.

I did not alter my course at all until the collision, when I steered towards the Jersey side, towards the objects in the water. I passed the schooner and the Palmetto on the Pennsylvania side near enough to recognise the engineer of the Bird, who was on the bobstay of the Palmetto. I did not see any appearance of water on him.

Q. Was your attention particularly drawn to these vessels; and if so, why?

I have a son who is pilot of the steam-tug Treaty, which I saw before I went to my dinner above the Horse-shoe. She went alongside of a brig lying above the Horse-shoe while I was at dinner. When I came from my dinner I saw this boat (Bird) coming down, and supposed it to be the Treaty. We have the habit of running for each other in the river in case of any news of towing. I run directly for her, supposing it to be the Treaty until after the collision. When I passed the pilot-house of the Bird I saw the name "Bird" on it; that was my first knowledge that it was the Bird. Thinking it was the Treaty, I felt interested for my son, knowing he couldn't swim.

Q. In your opinion, as a waterman, and according to your best judgment, to what do you attribute the collision between these two vessels?

(Mr. Henry objects, because the witness is requested to answer as to matters of opinion.)

A. It is and has been my opinion that it was through the neglect of "look out;" that the two boats running so near the same course, the speed of the Palmetto overreached the Bird; the Bird was overrun by her.

Cross-examined by Mr. Henry.

As we come out the course of the Schuylkill our boat heads down the Delaware; we don't consider ourselves out of the mouth of the Schuylkill till we get into ship channel, and turn up or down, as we want to go. I was not at dinner, I was on deck when we turned up the river Delaware. I went to dinner after we came out of the Schuylkill. I turned the head up the Delaware. I went to dinner some 15 to 20 minutes after that. I was at dinner be-

tween five and ten minutes. I was below Red Bank when I came from dinner, and again took the wheel, rather nearer the Pennsylvania shore. It is generally the custom for vessels towing against the tide to keep near in shore. I don't know that the course was the same when I came on deck as when I went down; having a heavy tow alongside, it gives an inclination to sheer, but we intended to steer the same course.

After leaving the mouth of the Schuylkill my mark to steer for is for a hill below Gloucester, called "Fancy Hill," at which place there is a "fish-house." My course would not have taken me to the western of the buoy; it would have taken me to the northern of the buoy; the course I was on was due east and west; it didn't vary two points. The true course from the Horse-shoe to the lower end of League island is W. by N.

We would have passed the shoal so as to leave the buoy on our right hand.

At the time of the collision I was near in the middle of the river. I came in the middle of the river, having sheered there, thinking the tug to be my son's—the one he was pilot of.

I commenced sheering into the middle of the river directly after I took the wheel after dinner, heading for the tug; I did so so as to get into the wake of my son's vessel, so that if he had nothing to do, he might help me along with my tow.

When I took the wheel after dinner my course and the Bird's course was pretty near in a line; the Bird was then inside the Horse-shoe buoy, steering for the mouth of the Schuylkill, or near that direction. The Bird was then on the Pennsylvania side of the channel, near the middle of the river. As far as I could see, I did not see the Bird alter her course after crossing the Shoe. I have been accustomed to sail in large vessels, and am considerably acquainted with the navigation by large vessels. I shouldn't like to say I knew it.

After the Palmetto crossed the Horse-shoe, she put her course down river till opposite Eagle Point; then she altered her course rather for the lower end of League island, and kept that course the whole time until the collision, as far as I could see.

I do not recollect seeing any sloop at anchor. I saw a schooner at anchor nearly in a direct line between me and the Bird. I could just see the edge of the Bird just clear of the Jersey side of the schooner, at the time the collision took place; the schooner did not interrupt my view of the Palmetto till after the collision. I could see the Palmetto on the Jersey side of the schooner, at least the principal part of her. After the collision she passed on the Pennsylvania side of the schooner.

I don't recollect seeing any sloop under sail at the moment of the collision. My attention was drawn to that at the time; it is a matter I shan't forget for years. I was about as near as may be,

nearly directly astern of the schooner, just previously to the collision. There were some vessels in the river, some lying up about the shore, and some working down; but as to noticing particular vessels, I didn't do it. I was not in a position to see whether the Palmetto had stopped her engine before the collision; that is to say, she had not stopped that I noticed; she was coming down. I did not see that she had altered her speed at the time of collision; it might have been. The collision took place about as near mid channel as possible; I heard no hailing between the Bird and the Palmetto; our boats, when running, make such a noise that we wouldn't hear a man hail twenty or thirty yards from us. The schooner did not entirely hide the two vessels from me; they were hid, partially, for about two minutes. My boat is about 56 feet long. My tow was one boat each side, and one astern.

Q. Does not a tug-boat, towing vessels in that way, find some difficulty in keeping a straight course?

A. We make short dodges, but not to any distance out of our course generally.

Q. But these dodges, are they not constantly occurring?

A. They are frequent by bad steerage, but with a tug well watched they seldom occur; they will occur sometimes, though not often; it requires close attention by the man at the wheel to steer close, so as to meet her at the helm; to do so, you must steer for a stationary object.

Q. When two vessels are approaching each other, and your own vessel was to "yaw," would it have the appearance to a person looking at the other vessel, that it "yawed?"

A. I believe not, sir, not if the man at the helm understood his business.

Q. What would indicate to a man that his boat "yawed?"

A. The direction of the boat heading in the water with an object ahead of him.

Q. But supposing that your attention was directed to the other vessel exclusively, would you be able to say which vessel had altered her course?

A. You would discover by the direction of your own vessel's heading, whether you or the other vessel had altered her position.

Q. I do not think you attach the right construction to the use I make of the word exclusively. I suppose you not to be watching the course of your own vessel, but the other vessel.

A. By the position of my own boat, I would know whether it was my yawing, or the other vessel's. I saw the Palmetto alter her course opposite Eagle Point.

Q. How long before the collision was it that you saw the Palmetto alter her course, when opposite Eagle Point?

A. Probably within the bounds of 18 to 20 minutes, probably not so long—from 15 to 20 minutes; I believe she held that course

until the collision; I did not see her alter it. It was the right course for a vessel of her size. I knew the Bird; she was about 60 feet long. A steam-tug of that size steers very easily. They will alter their course according to their speed; they feel the helm very quick.

Q. How long would it take the Bird to alter her course five points when running eight miles an hour?

A. It will take her over two minutes; but by slacking down, she will alter her course in half that time. It is considered that a short boat will answer her helm sooner than a long one, but it is not always the fact. I don't know of my own knowledge what the steering qualities of the Bird are.

GEORGE ROBINSON.

Sworn and subscribed, Jan. 10, 1856.

CHARLES F. HEAZLITT,
U. S. Commissioner.

January 14, 1856.

Present, Mr. Henry, Mr. Johnston, Mr. Kane.

Hugh McFadden, being duly sworn, deposes and says:

I am 24 years of age; a boatman by profession; I am captain of the canal boat Wm. McFadden. I saw the collision on the 1st December, 1855, between the Palmetto and the Bird; it occurred about half-past 11, as near as I can recollect—between 11 and half-past 11; the day was clear; a fine day; as clear as could be; the wind was a little S. W., very little breeze; ebb tide; I was standing in the wheel-house of the tug Kate at the time of the collision; my vessel was being towed by the Kate.

When I first saw the Palmetto and the Bird, they were from a half to three-quarters of a mile above Red Bank; they had passed the buoy; they were some little distance below; not a great way. When I first saw the boats the Palmetto was heading to the Pennsylvania shore, stretching more to the mouth of Schuylkill; the Bird was heading right down the river; I didn't see any change in her course whatever; I should judge from them, they were nearer the Pennsylvania than the Jersey shore; the tug was a little ahead when I first saw them; the tug was I think a little nearer the Pennsylvania shore when I first saw them.

We rounded to at the mouth of the Schuylkill; my boat was alongside of the Kate. I was in the wheel-house, me and Captain Robinson, captain of the Kate. I saw the Palmetto and the Bird coming down the river; I should judge they were a mile from me at that time, or a little more, I won't be positive, the exact length they were; the tug was ahead at this time, and the Palmetto was still gaining on her; they were coming both down; I should judge some few minutes, I can't say how many minutes, before the

collision took place; the Palmetto was heading for the Pennsylvania shore, and the tug came right straight down the river; I couldn't see that the tug altered her course any; the Palmetto struck her aft her engine-room; I think that is where she about struck her, as near as I could see; that slewed the tug Bird round across the tide; there was a schooner lying there; the wheel-houses of the Bird went to the Jersey side of the schooner; after it became detached there was a boat came off, either from the schooner or the Palmetto, which took a man off the wheel-house; I am not certain where the boat came from; the schooner was at anchor a a few yards below where the collision took place; we were below the schooner some three or four hundred yards, when the collision took place—between that and the fort, or the light-house; I mean by that, below the schooner.

After the collision, the Palmetto went to the Pennsylvania side of the schooner; there was a little alteration in the course of the Palmetto from the time I first saw her; she made a tack more for the Pennsylvania shore; she was, I suppose, a half mile above Red Bank when she made that tack; I did not hear any hailing; I can't tell you what speed we were making; we had three boats in tow, stemming tide; we were not making much headway stemming tide.

The schooner lying at anchor, taking her on and off, was lying opposite the lower point of Red Bank.

Cross-examined.

I was sitting in the wheel-house, not doing anything in particular—just talking with Captain Robinson. I was some three or four hundred yards below the schooner at the time of collision. I don't know as I can come anyways near it—may be eight or ten minutes elapsed between the time I first saw them and the collision—I can't say positively. We may be half a mile or a little more below the schooner when I first saw the vessels; I won't be positive about that. I think we were not out of our course, having the ebb tide. I think we were as near our course as could be. We were a little to the westward of that schooner—not a great deal. I can't tell you in what part of the channel the schooner was anchored; it was a little to the westward of the middle of the river; I can't give you a close calculation about that. The Palmetto was nearly heading for the schooner—may be a little to the westward. The schooner was a pretty large schooner—might be two hundred tons—I don't know; somewhere about that. I don't recollect her name. I am pretty near sure there were two men on deck just before the collision. The vessels may have been three-fourths of a mile above the schooner when I first saw them—may be not so far. I can't give you any idea how much the tug was ahead then. The tug was not very large in the water at that dis-

tance. I have seen her pretty often; I think her color is a grizzly brown; I forget her color. I am accustomed to the water; have been so for the last four years. I have never boxed the compass.

Q. Is it not difficult, at the distance of three-quarters of a mile, to tell to what point a small object is heading?

A. O! you can tell whether they shift their course or not.

Question repeated.

I mean, to tell for what exact point, on the shore, they were steering at that time?

O! you can tell whether they alter their helm or not; it wasn't three-quarters of a mile; it was not more than half a mile when the Palmetto headed her helm for Pennsylvania shore.

Question repeated.

I don't know as I understand that question.

Q. I am not speaking of the Bird or the Palmetto. Is it not a difficult, and almost an impossible thing, to be able to say exactly what course a vessel of the size of the Bird is steering when at the distance of three-quarters of a mile? I mean to say with anything like exactness?

I consider I can tell which way they are steering; whether for Pennsylvania shore, coming down the river, or for the Jersey shore. I can tell which way they are heading.

Q. I take that for granted. What I want to understand is, whether you could tell, within one or two points of the compass, which way they were steering?

I don't know anything about your points; it is out of my latitude. We are all canallers, and don't study up any points.

The Bird and Palmetto were some little distance apart when I first saw them; I can't tell you how far; may be fifty yards; I don't know. When the Palmetto came within half a mile of the schooner she headed for the Pennsylvania shore; she was not heading that way before; before, she stood her course right straight down the river.

Q. Supposing ten minutes to have occurred from the time you first saw them until the collision, how many minutes before the collision was it that alteration took place?

That I can't answer. I don't know how many minutes; I can't tell that; I can't tell exactly.

Question repeated.

It was not very long; it was a short time; they altered their course about half a mile above the schooner. The Bird was not steering for any particular point during the whole time; she was heading right down the river, as far as I could see; they were nearer together when within half a mile of the schooner than when I first saw them; some little nearer; she must have been, when she was gaining on her.

Q. When you said they were fifty yards apart, when you first

saw them, did you mean that the Palmetto was ahead fifty yards, or fifty yards to the one side of her?

I meant the Palmetto was fifty yards to the stern of the Bird, and not fifty yards to one side—kind of cat-a-cornered, or whatever you call it.

Q. What was the distance between the two vessels on a line coming down?

I can't give you much insight on that; I can show you better.

Q. How do you know how far they were astern?

I only gave you a guess; I don't give you a close calculation. I judge, when I first saw them, the whole distance was about fifty yards apart. The Kate sheered some little on an ebb tide; she would sheer a little; couldn't keep her very steady. My attention was particularly attracted towards the Bird; seeing them so close to one another, my attention was drawed a little that way.

Q. When two vessels are coming right down towards you, is it not more easy to judge how far apart their courses are, than how far ahead one is from the other?

Well, you can tell better how their courses are, than how far apart they are. You can tell whether they sheer or not.

Q. What I mean is, how far the distance the broadside of one vessel is, from the broadside of the other?

That I can't easy tell; that is a question not easy told. The Bird was not steering all the time towards us; she was coming right down the river as straight as could be; we were steering right up the river; I don't know what exact point we were steering for. At the time of the collision, and a little previously, the schooner was not in the way of my seeing the two vessels. The steamboat Star came out about the time of the collision. There was a sloop about half a mile above where the collision took place; I can't say whether she was at anchor, or under sail; she was above where the collision took place; we passed her afterwards. I didn't see any vessels below. At the time of the collision my eyes were drawed to that; I didn't look down the river; we were a little to the westward of the schooner. Tug vessels with a tow sometimes keep near shore with an ebb tide, and sometimes they don't; there is no certain gauge with them.

Q. Is it not best to keep nearer in shore?

Well, sometimes the tide runs a little slack in there; there is not much difference, I guess.

Q. Was there little or much difference between the course of the Palmetto and the Bird, before, as you say, the Palmetto altered her course?

I couldn't perceive there was any difference—that is, in the change of them, until the Palmetto altered her course. She altered her course some little; I can't tell you how much; stood more for Pennsylvania shore; she pointed more for the upper point of the

mouth of the Schuylkill; before she changed her course, she was not heading for any particular point; I suppose she was just heading down the river. I don't know that she was before heading for any point on the Pennsylvania shore.

Q. You saw them both all the time on the Pennsylvania side of the schooner, did you not?

Well, no, they were more to the stern than on either side of the schooner.

Q. In what part of the channel did the collision occur?

A. I can't tell you that—in what part of the river; it was a little to the westward of the middle.

I don't know as I can tell you in what part of the channel they were when I first saw them; I can't tell what part.

Q. How far ahead of the schooner did the collision take place?

You mean astern, don't you?

Q. Well, ahead or astern?

It was not a great ways off; may be 20 yards off. I won't give any close calculation how far.

Now let us know positively whether the collision occurred ahead or astern of the schooner?

Ahead. She was laying at ebb tide, I am sure.

Re-examined.

I have been a boatman for four years on two different boats; they loaded from Norristown to different Jersey creeks; they did not carry sails. We come down drawn by horses, and were towed by small steamboats on the river. Never done any other boating.

Q. When you have spoken of the western side of the river and channel did you mean the Pennsylvania or the Jersey side?

The Pennsylvania.

HUGH McFADDEN.

Sworn and subscribed, 14th January, 1856.

CHAS. F. HEAZLITT,
U. S. Commissioner.

January 22, 1856.

Present, Mr. Kane and Mr. Henry.

George H. Howes, being duly sworn on the part of the libellant, says:

I am 38 years of age, and by profession a waterman; have followed the water 18 or 19 years out of Philadelphia, river navigation and coasting trade. On the 1st day of December last, I was a mile to a mile and a half below the Point House on the Pennsylvania shore, rolling some logs into the water—there were two men assisting me. I saw a collision that day between the Bird and the

Palmetto; I didn't see it just as the hull was struck, but I saw the Bird as she turned over. I was down at the foot of South street before the Palmetto or the Bird left the wharf, or left to go down the river. I went down with a couple of gentlemen to roll off a couple of logs off the meadows, and when I seen the Palmetto and the Bird coming, the Bird was ahead, but how far I couldn't tell; they were in a range as near as I could tell them ashore, but whether within 50 or 100 yards of each other I can't say; how the vessels were heading by the points of the compass I can't tell, but they both heading for the mouth of the Schuylkill, as I thought, for the Pennsylvania shore; that is all I have got to say.

When I first observed the boats they were just passing the Point House. I didn't see them until down there. I was attending to my work. I think I was betwixt a mile and a half and two miles when they struck; we were then above them; they had passed us while we were at work. My attention was called to them because, being a waterman, I am interested in vessels. I happened to look up and I saw the boats. The day, at that time, was a pretty day; the wind was light; I don't recollect how the tide was running; up—flood—no, sir, I mistake, I am too fast there; we were rolling off logs at high water; it must have been slack water, or a little ebb.

Cross-examined by Mr. Henry.

I think I was above League island; I was below the Point House, a long distance from the place of collision. When I first saw the vessels, both vessels were above the Horse-shoe; these boats were about the same length from the Pennsylvania shore, the Bird ahead. I don't recollect which side of the buoy the Palmetto passed; I did not see them when they passed by me. After I first saw them, I did not notice them until the time of the collision; I was busy at work. At the time of the collision I think they were nearer to the Pennsylvania shore than the Jersey shore. They were within range of the Red Bank ferry to us at the time; I mean by "range," I saw them with a line with Red Bank, looking down the river from where I was at work. I did not see them pass the Horse-shoe. I was betwixt a mile and a mile and a half below the Point House.

his
GEORGE H. ⋈ HOWES.
mark.

Sworn to and subscribed, January 22d, 1856.

CHAS. F. HEAZLITT,
U. S. Commissioner.

Adjourned till to-morrow evening at 6½ o'clock.

January 23*d*, 1856.

Present, Mr. Kane, Mr. Henry.

William C. Gillingham, being duly sworn:

I am 29 years of age, and reside on Front street, below Mead alley; I am a waterman; have been so about 15 years. At half-past 10 o'clock, on the morning of the collision, I was on board the Bird as a passenger going down the river; I was going down to show them an oyster boat they had to tow. I believe the agreement was to go down as far as Marcus Hook, and if we didn't see her to come. I judge it was about ebb tide when we left; we left about half-past 10; I won't be positive about the minute. There was a very light air to the south'ard and westward. I saw the collision. When we left Spruce street wharf in the Bird, we went down the river as far as the navy yard; then I observed the steamship Palmetto coming out of the dock; I did not take any more notice of her until we got near the Point House, when I happened to look back and see her again; I suppose she was about the cove then. We continued on down the river and crossed the Horse-shoe, I guess some 400 yards inside the buoy; we had to pass on the Pennsylvania side in order to cross the Horse-shoe. After we got below a piece I observed the Palmetto coming round the buoy; there were some vessels lying to the westward of her at anchor, along the western shore, and we were going in among them to see whether the schooner I was after was there or not; I observed the Palmetto coming on us hand over fist then, outrunning us, and I asked the captain of the Bird if he saw the steamship coming; I was standing on deck, forward of the pilot-house; the captain put his wheel a-port to keep clear of her; I saw her coming pretty close and I hallooed; I saw a couple of men standing abaft the pilot-house on her deck, but I couldn't recognise them; I asked them what they intended to do, whether they intended to run over us or not; just at that time she struck us abaft our engine-house, on the fore-quarter, got the Bird down, and she sunk; the pilot of the Bird run aft; the engineer got on the bobstay of the Palmetto, and the rest of us were overboard; that is about all; I swam round two or three minutes and got on the pilot-house of the Bird, when I was taken off by the schooner's boat, which was at anchor; I think the name of the schooner was Caroline Hall; there were four men on board the tug besides myself—the captain, or pilot, the engineer, and the fireman and myself; the man in the next room is the engineer; I don't know his name; I believe the captain's name was Wilson; I was never acquainted with him before; the fireman was drowned; he was alongside of me when we both got overboard; we ran from aft forward at the time of the collision; the last that I saw of him was on the Bird; I didn't see him after

I went overboard; I climbed up on the pilot-house, which floated on the starboard side of the Caroline Hall; I was on top of it.

I did not at any time see any alteration in the helm of the Palmetto; judging from the way she was coming at us, her helm was to port, heading for the Pennsylvania shore.

(Mr. Henry objects as a matter of opinion.)

I couldn't exactly tell to what point she was heading after she rounded the buoy; she was heading more to the westward than she need be; by westward, I mean Pennsylvania shore; I did not observe any change in the Bird, until I mentioned to the pilot about the Palmetto, and then I saw him put the wheel to port.

In going across the Horse-shoe the Bird was ahead considerable; the Palmetto passed on the eastward side of the buoy; the Palmetto was about the ship's length off when I asked the pilot of the Bird if he noticed her.

Cross-examined by Mr. Henry.

I got on board the Bird at Spruce street wharf; immediately after leaving the wharf she headed up the river; she was lying with her head up the river at the time; we just turned around; she was lying at the wharf head up; I first observed the Palmetto when I was about the navy yard; I did not observe her in the dock at all when we went past; when I first saw her she was coming out of the dock; I don't know; I didn't take particular notice, whether bow or stern foremost; it was something that didn't concern me, so I didn't take particular attention how she was.

The P. was to the eastward of us when we were opposite Gloucester, but considerably astern; I remember seeing the P. when she went round the Horse-shoe buoy; we were then ahead and inshore of her; we crossed the Horse-shoe 3 or 400 yards inside the buoy, I guess; we were considerably ahead of her then, and nearer the Pennsylvania shore; I don't know how far from shore; I can't tell the distance; I never measured the distance from the buoy to the shore.

When we straightened across the Horse-shoe, I don't know for what point on the western shore the Bird steered; I mentioned to the pilot then, that there were some vessels there, and the schooner we were after might be there; we were heading more for the bridge at Broad street, than the mouth of the Schuylkill; we were heading more to the westward, than the mouth of the Schuylkill; the schooner we were going in search of was a small oyster boat.

I don't know how many vessels I saw at anchor; I took notice of two or three being there; schooners, I believe they were. The schooner I drifted past was one of the schooners.

I did not hear any hail from the Palmetto; I hailed them about

a minute before the collision; hadn't hardly the words out of my mouth, before she struck us. The tug had her helm altered, before I hailed them; she hadn't time to alter anything. After I hailed, she steered us right across their bows, and sunk us.

The P. was about a length off, when I spoke to the pilot of the Bird. I don't know how long, in point of time, it was before the collision, that he altered their helm; the Palmetto was about a length off; it wouldn't take her long to come on; a minute, a second, hardly, as fast as she was going; I don't know. I had no compass, and therefore cannot tell you how many points he altered his course; if I had a compass, then I might tell you. I had no interest in the boat, and did not pay any attention to the steering; if I had been a hand on the boat, I might have paid attention. I can't tell how many spokes he altered the wheel; he was in the wheel-house, and I was out; I saw him alter the wheel, but I didn't pay attention how much he altered it. I saw him heave the wheel to port; I can't tell you how much the Bird altered her course. We were above the bridge at Broad street, when he put his helm to port; we were above, when she struck us; of course, we must have been above all the time. This was the only time she altered her course, after rounding the point. I was standing forward of the Bird, on the port side, after passing the Point House. The wheel of the Bird is on deck, on a kind of a house, over the engine. I was standing there; I had a spy-glass in my hand, only a little before that, and had laid it down. I was looking out for the vessel I was after; I was by the wheel-house all the time; I was not on the engine-house; I had nothing to do there; I don't know nothing about steamboats; I think the pilot-house is over the engine or over the boilers; I don't know as I had been speaking to the pilot of the Bird before the collision; I had nothing to speak to him about, any more than about these vessels.

Q. Before the Bird put her helm a-port, how far was she to the westward of the Palmetto?

About a vessel's length.

Q. At that time, was the Bird running the same course as the Palmetto?

A. At that time, she was heading more to the westward than the Palmetto.

Q. I want you to think, now, sir, that if she had kept on that course, whether she would not have crossed the bows of the Palmetto?

No, she would not have come any ways near it.

Q. How far ahead of the Palmetto was she, just before she put helm a-port? You said she was a length off, to the westward.

I said she was a length off. The Bird was not more than her own length ahead of the Palmetto, when the Bird altered her helm. She struck us on the port quarter; I don't know how far

from the stern; abaft the engine-house. I did not see any vessel as small as my oyster boat, among those vessels at anchor. The day was a clear, calm day—so calm, vessels couldn't stem the tide; after the collision, the Palmetto went right alongside the schooner; she was anchored nearer the Pennsylvania shore.

Q. I ask you if you saw the Bird alter her course, when you say you saw the wheel put a-port?

I didn't pay any attention; when her helm is altered, it must alter her course, but I didn't pay any attention to whether she did or not.

WILLIAM C. GILLINGHAM.

Taken, sworn and subscribed, Jan. 23, 1856.

CHAS. F. HEAZLITT,
U. S. Commissioner.

January 24, 1856.

Present, Mr. Kane and Mr. Henry.

Harmon Seeley, being duly sworn, says:

I am thirty-eight years of age. My business was, at the time of the collision, engineer of the Bird; am a seaman by profession. I was on board the tug Bird on the 1st of December last, as engineer. There was the pilot, or captain of the boat, named James Wilson, another named Cornelius Donahoe, the fireman, another going down with us to point out the oyster boat we had an engagement to tow to Philadelphia; I don't know his name; he was here yesterday.

As near as I could judge the time, it was about ten o'clock, between ten and eleven, that we left Spruce street wharf; proceeded on down the river as far as the Point House, without my taking any notice of the steamship Palmetto. When about abreast of Gloucester and the Point House, between the two ports, the fireman came up out of the fire-room, and walking towards me on the larboard side of the tug, makes a remark, there comes the Palmetto. I was sitting in my engine-room door at the time; I looked astern, and towards the Jersey shore; saw the Palmetto coming down after us. The next remark I made to him (fireman) was, I didn't think the Palmetto was as fast a ship as she was cracked up to be. He replied, that she was as fast as she was represented to be; that she had come up to the city in eight hours. There were no more remarks about her, or any more notice taken of her, until we had passed the buoy of the Horse-shoe. We went down over the Shoe, on the Pennsylvania side of the buoy, making a straighter course down the river than the Palmetto was making; after we passed the buoy of the Horse-shoe, I won't say exactly the particular distance, I can't say that I took so particular notice of the distance. I then took notice of the Palmetto again; we were about

half a mile ahead of the Palmetto at the time, as near as I can judge; she was then about her own length past the buoy of the Horse-shoe, after turning in the ship channel; she was then heading a more westerly course than we were at the time, as I took notice then; I also remarked in my own mind, that she was making better time—that is, going faster than she was, previously to rounding the Horse-shoe. I thought they had better head of steam on; she was making more swell in the water forward, than she had previously been making. I didn't take any more notice of her then, until I heard Mr. Gillingham make a remark to the pilot, that the ship was coming down upon us. At that time I was giving my engine some tallow; I had the tallow pot in my hand at the time. On hearing him make that remark, I looked out of the door towards the ship; saw that she was close aboard of us. I immediately dropped my tallow pot, and jumped out of the engine-room on deck, and hallooed to the pilot in our wheel-house, "hard a-port your wheel," not knowing whether he had seen the ship or not, yet. Not seeing him move his wheel, I immediately cast my eyes on the tiller on the quarter-deck, astern, and saw that the tiller was already hard a-port; that nothing more could be done to cant the boat's head off. I immediately hallooed to the steamship, "What are you trying to do? Are you trying to run over us? For God's sake don't run over us." By this time she was so close aboard of us, that I could almost reach her by putting out my hand; she then struck us a glancing blow, about ten or twelve feet from the stern, on the larboard quarter, in front of the engine-room door. I put my hand against the Palmetto's stem, and tried to bear her off, seeing that the ship's suction held us hard against her stem and bluff of the bow. My pressure against it was so hard, that it broke a plank-shear right under my feet, a kind of slanting crack like, pressed in our waist and top rail, and ranged ahead from where she struck us, some two or three feet towards our bow. I then discovered that our case was more critical than I first thought it would be, when she struck us. I went right over to the starboard side of the engine-room, holding on to the engine-room, to see if we were taking in water over the rail. We had careened over considerable; saw the water rushing over the rail, and over the fire-room door, down into the fire-room. I then immediately stepped across deck, on the larboard side again, as quick as possible, feeling satisfied that she would turn us over or sink us. I then got hold of the bobstay of the ship; she had pressed our stern so much around to westward, that we fell right across her stem. I hallooed to the fireman to come where I was, to the Palmetto's bobstay; he paid no attention to my remark to him, but ran forward; so did Mr. Gillingham. I did not notice whether our pilot was in the wheel-house, or not. Our boat immediately went down, turning bottom upwards, breaking some

portion of the steam-pipe in the engine-room. I suppose it was under water when it exploded, and threw up some water on me, while I was holding on the bow of the Palmetto. I saw right underneath me Mr. Gillingham, Mr. Wilson, the pilot, and Mr. Donahoe, in the water; hallooed to Donahoe, for God's sake to try and save his life, by taking hold of the engine-house which had floated off deck. I hallooed to a schooner lying near broadside of the steamship, with her head canted to the eastward, to try to save the men's life; there was a small boat alongside of the schooner, and they were passing oars into it. Looking down, I saw Cornelius beating and pawing the water, and finally go down. I don't know that he could swim; the engine-house floated right over where he went down, and I saw him no more.

The wheel of the tug is rigged with straight gearing, and moves the same way with the wheel, turning the wheel a-port; the rudder goes to port.

The tug, without a tow, draws about 7 feet.

I couldn't see the other two men after Cornelius went down, whether they were saved or not.

The Palmetto was making from 11 to 11½ knots an hour; we were making about 10 knots, the tide included.

The Palmetto struck us on our larboard quarter, glancingly, some two feet forward of the engine-room, a little forward of the after end of the engine-room.

The next thing I saw or heard was the cook of the Palmetto; hearing a halloo, looked over the bow, and seeing me, says, my God, Seely, are you safe? We thought you were drowned. Says I, send me a rope down so that I can get aboard. I was hoisted on deck. After reaching the deck, some one remarked to me, what was you trying to run across our bow for? I don't know who it was, I thought it was the pilot. I made answer to him, we were not trying to run across your bow; it looks more like your trying to run over us. I next asked them if they had saved the men; they told me they had. I went towards aft, about midships of the vessel, to the cook's galley, and saw Mr. Wilson standing by the stove, drying himself, very much excited.

I was examined before Mr. Murphy, a U. S. steamboat inspector, at their office. Mr. Murphy asked me questions. Captain Baker was present, and asked me questions respecting this collision; there were three others present. One was a boss machinist; there were none other present, that I know of. The steward of the Palmetto fetched me notice to attend there. I was sworn before I was examined.

(Mr. Henry objects as irrelevant.)

They made notes in writing of what I said. The notice I received is on board of the boat. I carried a notice to Mr. Wilson, the pilot. Mr. Murphy directed the gentleman taking notes, to

make out a notice for Mr. Wilson. I don't remember the day; it was 3 or 4 days after the collision. Neither Mr. Gerhard, Mr. Molloy nor Mr. Kane, were present.

Cross-examined by Mr. Henry.

The pilot-house is a small built square place, with windows all round; it sets forward of the smoke-stack; it is on top of the trunk of the cabin, unconnected with the engine-house; the feet of the pilot are on the top of the trunk, which is about 2 to 2½ feet from the deck. The pilot communicates his signal by pulling a bell-wire, attached to the gong. No signals had been made to me for ten minutes previous to the collision, either by signal or voice.

We had about 60 pounds of steam to the inch, when we passed the Horse-shoe. We had the same about the time of collision. I did not, at any time after we passed the Point House, shut off the steam. We run wide open the whole time, for the purpose of making good headway down the river to get the schooner. I did not have any conversation with the wheelsman at any time going down—not to my recollection. He did not, to my recollection, say anything to me. I never said that I had any conversation with the pilot. It was said on board the Palmetto, that I said I had spoken to him; but I never had any conversation with him, any more than to say, "hard a-port the wheel." I don't know whether he heard that or not.

Mr. Willetts was the name of the gentleman I spoke to on the Palmetto. The captain said I spoke to him, but I have no recollection of it. The man I spoke to was standing forward, close to the bows. The remark was made to me by some one I supposed Mr. Willets. He was a short, thick-set man, with a drab overcoat. He was the one I think I answered; there were a number round me; five, six, seven, eight men, or more.

Q. Did you not say to any, and if so, what person on board of the Palmetto, just after you had been hauled on board, that you had told the pilot of the Bird that he would be across the Palmetto's bow; that the pilot answered, "give it to her, let her go," and that I then opened her as wide as I could?

No, sir; I never made any such remark to anybody, either on board the Palmetto, or our vessel. He was in the pilot-house, and I couldn't converse with him. I never left my engine-room door. Captain Baker asked me in the inspector's office if I had not said so; I told him no; he said I had, and he would prove it by several persons.

(Mr. Henry objects as not answering the question.)

Q. Did you ever use words to that effect on board the Palmetto?

I have no recollection of making such remark or words to that effect; I couldn't have made such a remark as that, because I hadn't said such a thing, any more than hard a-port.

The vessels were heading to the westward side of the river, to the southward and westward. I was aft the whole time. I heard Gillingham when he first spoke to the pilot; it was a very minutes before the collision; not more than three or four, if it was that; it might have been a little more or less, I can't say. I think I heard him make a remark about the wheel. I think he made the additional remark that the ship was coming down upon us.

Mr. Henry hands a watch to the witness, and asks him to observe how long a space of time it takes the minute-hand to move round.

The witness does so.

Q. How long was it after you first heard Gillingham halloo, before the collision occurred?

Mr. Kane objects to the witness being asked to measure the time by any such standard; to his being asked to tell us what time elapsed whilst in peril, with startling incidents following each other in rapid succession, by a comparison with a watch held in his hand during profound silence, with his attention exclusively fixed on the second-hand. He suggests to the learned counsel the old saw, "that a watched pot never boils."

A. About two minutes.

Then I stepped out of the engine-room, and spoke immediately to our pilot, seeing the danger. I hallooed at him. I don't know whether he heard it.

Q. How near was the Palmetto to you then?

About the length of the tug. I can't positively say, but as near as I can judge, that distance.

Q. Did you not say on your examination in chief, that you could almost touch her by reaching out your arm?

That was after hallooing to the pilot of our boat, looking astern, and hallooing of the steamship; she had gained that much on us, during that time; first looking to one boat, then the other.

Q. Was not the course of the Bird somewhat across that of the Palmetto?

I don't understand you, exactly.

Q. Was not the direction in which the Bird was going such as would lead you across the bows of the Palmetto?

Undoubtedly so; we were making a straighter course than she was; she was sailing more westerly, coming down upon us; we were very near in a line with her, ahead of her.

I can't tell whether the forward windows of the wheel-house of the Bird was up or down; the after ones were up, shut; there are side windows to the wheel-house of the Bird; the starboard one I couldn't see, and the one on the larboard side I never noticed. I saw the pilot through the after windows; they were up; they drop down when they are open. At the time I hallooed I did not see them move the wheel; I immediately looked aft at the tiller.

The steam-tug steers pretty easily; the Bird steered easily to the best of my knowledge. I had been on board the Bird two years and ten months, previously to the collision. I have sometimes steered her while some of them were getting dinner. She feels the helm generally pretty quick; it would not take more than a second to change her course two points.

HARMON SEELEY.

Sworn to and subscribed, January 24, 1856.

CHAS. F. HEAZLITT,
U. S. Commissioner.

In the District Court of the U. S. in and for the E. D. of Penn.—
In Admiralty.

MOLLOY
vs.
THE STEAMSHIP PALMETTO. } Collision.

Depositions of witnesses on behalf of the respondents, taken under rule, before Charles F. Heazlitt, U. S. Commissioner, at Philadelphia, December 20, 1855.

Mr. M. P. Henry, Mr. Campbell, and Mr. Johnston, for resp ndents.

Mr. B. Gerhard, Mr. R. P. Kane.

Written interrogatories waived by consent.

Mr. Kane objects to the examination of witnesses on behalf of respondents, there being no answer filed.

George S. Maguire, being duly sworn, says:

I am fifty-seven years of age; I reside in Wilmington, Delaware, and by occupation a waterman; I should say that I have followed the water for forty years; I command the sloop Helen, of Brandywine; I expect to leave Philadelphia to-morrow. I have been navigating the Delaware river all that period of time, and am acquainted with the channel of the river Delaware from one end to the other. I saw the collision between the steamship Palmetto and the tug Bird; it was on Saturday, the 1st of this month. I was on board the Helen, a little below Red Bank pier, on the eastern side of the ship channel. In the first place, I saw the steamer and the tug, when they turned round the Horse-shoe. The Palmetto went to the eastward of the buoy; the tug to the westward, perhaps 200 yards, maybe; at all events, 150 yards, as near as I can tell from where I was. I seen them straighten down the river, the Palmetto as near straight down the ship channel as could be; the tug still kept the western side of her, and appeared to be running straight down the river also. In a few minutes after, I went below; I saw nothing more afterwards, until notified by one of my men that there was going to be a "run in." I run on deck as

quick as I could, and heard some one distinctly say, "where the devil are you going?" At that time, the two boats were very close together, the small one crossing diagonally the bow of the large one; in less than a second after I seen them, or in that time, the collision took place.

I would judge that the tug was 150 yards to 200 yards to the westward of the Palmetto, the last time I saw them before going below; they were then both standing down the river, both on the same direction, as near as could be.

When I came on deck, the Palmetto was holding her course straight down the channel, as near as could be; that course is a straight one, as near east and west as may be. The course of the tug when I came on deck was nearly diagonally across the channel, and across the bow of the Palmetto. I would suppose that she (tug) had varied at least two points and a half of the compass, after she rounded the Horse-shoe. I was on the eastern side of the channel, in the Helen, and when I last came on deck, just before the collision, I would suppose I was between 2 and 400 yards below the Palmetto, and about 200 or 250 yards to the eastward of her. The Palmetto was going straight down the river when I last saw her, previous to the collision. The Palmetto is a propeller. From the position the Helen was in, I could see the bow as well as the stern of the Palmetto; her engine had stopped before she struck; I am satisfied of that; I was in a position to see that her wheel had stopped before they struck.

I saw no efforts made on board the Palmetto to avoid the collision, except to stop the engine. [I didn't see that she had any chance to make any.] (Objected to as voluntary on the part of the witness.) She had no chance, because if she had veered to the westward, she would have struck the tug sooner; if she had changed her course to the eastward, she would have run into a schooner which lay at anchor within about 100 yards of her, below; the tide was ebb, very nearly half spent.

It was hardly an instant from the time I heard the remark, there would be a "run in," before I was on deck. I was sitting at the foot of the steps; there were but two or three steps, and I rose right up.

It was not more than half a second after that remark that I heard the hail, "where the devil are you going?" it was as soon as my head was on deck. I could not say positively which vessel the hail was from, but I thought it was from the Palmetto.

I have never navigated the Delaware in a larger vessel than a schooner drawing eight feet of water; that is the largest I ever was in. I mean a main keel vessel; the one I am now in draws 15 feet when her centre board is down. I don't know the draught of the Palmetto.

Q. Are you sufficient of a pilot, and well enough acquainted

with the navigation of the river Delaware, to be able to say what course a vessel of a large size, such as the Palmetto, would take, after leaving the Horse-shoe?

(Objected to as leading.)

Yes, sir, she would run down from the Horse-shoe near a west course to the fort. The Palmetto on this course was near a west course.

I don't know the draught of water of the tug.

The depth of water to the west of the Palmetto was from 3 to 6 fathoms; there was 6 fathoms for 300 yards to the westward of her, and then gradually shoaling; there is three fathoms close in to shore, westward, within 150 yards of the shore.

Cross-examined by Mr. Kane.

The sloop Helen was under weigh; she is sloop-rigged, the sails all up; the wind was very light and variable; it was to the southward, a light air from the eastern shore, what little there was; it was very light; it was a south wind, drawing off the eastern shore; there was scarcely enough to give way to the vessel. I don't suppose we were going a mile an hour at that time. I was on the quarter-deck when I saw the vessels round the Horse-shoe. I was steering; there was not wind enough to fill my sails. When we left the navy yard the wind was to the west; at the point it was S. S. E.; at this time it was south, but what little there was had most died out. I don't suppose I was on deck more than three minutes after I saw them round the Horse-shoe. There was nothing peculiar in their appearance to draw my attention then, except that I saw they were racing, because of their speed. I could see the foam off the bow of the small boat; that is what made me think they were racing. I frequently see these little tugs; it is an every day occurrence to see them. There is not a great deal of difference between their speed and the larger ones. There was no vessel very near them, except the schooner that was anchored. If I recollect right, I think there was another schooner lying to the westward, considerably below the other; she was at anchor too; I don't know their names; I can't tell what speed the steamers were making. I should suppose they were going from 8 to 10 knots an hour. I don't know that that is an unusual speed for the large ones, such as the Palmetto. I have seen tugs go frequently at or near the rate of ten miles an hour for a short distance. I don't think they could hold it long. A vessel like the Palmetto could hold the speed of ten knots, I should think.

My vessel was a little above Red Bank, sir, on the eastern side of the ship-channel, when I first saw the vessels. It was shoal water between me and the eastern shore; I mean the main ship-channel when I say "ship-channel." I know the Horse-shoe buoy. The Palmetto was a little above the buoy, coming round; the other

was about opposite, to the westward, when I first saw them. The Palmetto was very close to the buoy, just coming round, on the upper side, when I first saw her. I suppose I was below from ten to fifteen minutes before the man called out, there was to be a "run into." I was, perhaps, two or three hundred yards above Red Bank pier when I went below. When I came on deck, I don't think I was over two hundred and fifty yards below the pier. I left the vessel in charge of George Vandyke, not the man in the next room; George Warren was the name of the man that called to me; when I came up both of the vessels were in the ship-channel, nearly opposite to Red Bank pier, a little above it, if anything, between two and four hundred yards above my vessel; I can't tell any nearer than that; we can't measure the distance by the eye; we may have been within two hundred yards of her, and may have been four hundred yards from her; I don't think it was more than a second after I got my head above the hatch until they struck. I jumped up; I didn't know but what they were coming into me; anything of that kind on board of a vessel is very alarming. When they struck it made considerable noise; I was then looking at them; I had my head above the hatch; my feet were not on deck; I was standing on the steps; after the collision I came on deck; I could have got on deck before the collision if I kept right on, but the moment my eyes ketched them I stopped and looked at them. I looked at them before they struck.

Q. Think awhile, so as to answer me as positively as you can; how long were you looking at them, with your head above the hatch, before they struck?

I don't think it is necessary to think on that much; I have answered that twice before; I am satisfied it was not more than a second.

While I was standing there I saw both ends and side of the Palmetto; I could see past her the whole length, though I couldn't see her stern windows; she was near about the ship-channel, the same channel I was, but I was on the eastern side of it; she was near midway, heading right down the river, near a west course; she would have fetched Fort Mifflin on that course.

The schooner at anchor did not interfere with my view; I was too far to the eastward for her to intercept my view. The schooner was rather above me, if anything, and I suppose two hundred yards to the westward of me; the Palmetto afterwards passed to the westward side of the schooner, and very nearly struck her.

I don't recollect of any vessels being close by, under sail, in the channel-way; I don't recollect of any, except the two vessels at anchor.

The Palmetto was holding very nearly the same course when I came on deck that she did when I went below; I didn't see her al-

ter her course at all; I think she would have fetched, on the course she had when I went below, the fort piers, or may be a very little above them. The Palmetto was about the middle of the channel when I came on deck the last time; the channel is near half a mile there; there was some five to six fathoms all the way across in the ship-channel.

The Horse-shoe buoy is on the western side of the channel, in, I think, three and a half fathoms water. The Palmetto rounded the eastern side, and the tug rounded the western side.

The Palmetto struck the tug on the larboard side, a little aft amidships, stem on. I can't tell whether she broke into her; I then saw the tug turn over immediately, in the twinkling of an eye, almost; she turned bottom upwards; I didn't see much take place; she went to the bottom; the house came up with a man on it; I saw the man climb out of the water on to the house; I saw the men on the Palmetto throw a line to another man in the water, and pull him up the side; I don't recollect seeing any other man in the water, though I saw one man, who was the engineer, though I didn't then know it, climb up the bobstay of Palmetto. I only know from hearsay that he was the engineer; I can't tell you the name of the man from whom I heard it; it was not from a man in the Palmetto; it was from a man who runs in the tugs sometimes.

The Palmetto was going down; her wheels were not in motion; she was drifting on with the tide; she drifted by the first schooner at anchor. She must have had some little headway, I presume; but when she passed the schooner, at anchor, I am sure her wheel was not going. I did not see anything after that. I saw the Palmetto's boat take two men over to the Red Bank steamboat; I suppose the Palmetto was then about two hundred yards below the schooner that lay at anchor. When that boat returned she went on down the river. The schooner's boat took the man off the house and put him on the Red Bank boat; she came off and got the men.

The hail I heard was, "where the devil are you going?" I think that hail came from the steamer, from the position of the other boat, which was running diagonally across the bow; I was standing in the companion-way with my head above the hatch when I heard that hail.

I did not say that, when I got my head above the hatch, the steam-tug was already across the bows of the Palmetto. She was on the western side of the Palmetto, running diagonally across her bows; they were very close together; how far below I couldn't say.

The helm of the tug must have been starboard a little, to have brought her in the position she was heading; it couldn't have been to port.

The helm of the Palmetto must have been near midships, as she was holding her course; all vessels will vary a little, and the helmsman will keep her steady.

I can't say that I saw any alteration in the heading of the Palmetto, from the time I came on the companion-ladder till they struck. I did not see any alteration in the heading of the tug, as she was then going diagonally across her bow.

After I saw the position of the tow-boat, then I looked along the Palmetto and saw that her wheel was stopped; I am satisfied it was stopped before they struck.

GEORGE S. MAGUIRE.

Sworn to and subscribed, Dec. 20, 1855.

CHAS. F. HEAZLITT,
U. S. Commissioner.

George Warren, being duly sworn:

I am forty-nine years of age, and follow the water; I am on board the sloop Helen, Capt. Maguire; I begun to follow the water when I was nineteen years old; I have been sailing to Philadelphia, New York and Boston, in sloops and schooners.

I saw a collision between the tug Bird and the Palmetto, on the 1st December, about ten o'clock in the morning; the wind was to the westward when we started; it come round to the eastward; the wind at that time was south'ard and eastward, very light. I was on deck forward, sitting at the foot of the bowsprit, with my feet on the starboard side; the boom was on the starboard side at that time. I saw the tug and the steamer pass the Horse-shoe; the Palmetto passed, I thought, to the eastward, very close to it. The Palmetto, after she passed the buoy, steered west by north, or west, or somewhere about there. I did not see her vary her course. The tug passed the Horse-shoe buoy to the westward, from 150 to 200 yards to the westward, a good piece to the westward; the tug was ahead; the tug seemed to be standing her course; near about the same course as the big boat, but in to the westward. I saw the tug vary her course; when she varied her course, I made answer; says I, "there is going to be a run in;" then she seemed to be half a length ahead; her bow had come more toward the eastern shore, and that is the reason I thought there was going to be a "run in;" then our captain, when he heard me make that answer, run up the companion-way on deck; then I heard one on board of one of the other boats say, "what in the hell, or the devil, are you going to do?" By that time the large boat's wheel had stopped. It wasn't more than a minute before the collision that the tug altered her course; she was to the westward of the Palmetto; at the time she altered her course she wasn't more than her length to the westward of the Palmetto.

Q. Would the course the steamer and the tug were on, before the tug altered her course to the eastward, have brought about the collision, or would they have gone clear of each other?

Yes, sir; I should say they would have gone clear of each other.

There was a schooner anchored; I don't know her name. There was an oyster boat coming round the buoy. I don't think she had got down to the Horse-shoe; and there was another one below all of us. She was at anchor too.

The schooner (the first one) was anchored near about opposite Red Bank; we were to the eastward of her, and she was to the eastward of the steamboat.

Cross-examined.

I was sitting forward when I first saw them, and was forward when they came together. I remained there till they came together. I was sitting on the bowsprit, with my feet on the starboard side. My back was forward, and I was looking aft—a little starboard of the mast; they were starboard of us; I was looking at them; when I first looked at them, the big boat was coming round the Horse-shoe, and the little one was coming to the westward; the little boat was from one hundred and fifty to two hundred yards from the buoy, to the westward, and the other was very near to the buoy; I should think the little one was one hundred and fifty yards to two hundred yards ahead; she cut off a good deal by the other going round.

Our vessel, when I first saw them, was about one hundred yards above Red Bank—may be more; I didn't take notice much.

I have seen a good many tugs; they may go as fast as the big steamer for a little distance, but it wouldn't last long; the big boat was going the fastest of the two.

The big vessel, on the course when I first saw her, would have fetched about the fort; she was steering about for the fort, as near as I can tell. The tug was pretty much in the channel when they came by us; but, when she was at the buoy, she was outside of the channel, heading about west. I saw her when she altered her course to go across the bows, and had up to that time been holding her westerly course; and the way I came to notice them, the big boat seemed to be gaining on her—and the first thing I knew was, the tug had altered her course, and was across the bow of the Palmetto; that was the first thing I saw of a change of the course of the tug.

When the tug made the change, the two vessels were a little below Red Bank; we were a little below Red Bank—a little below them. The main ship channel, at that point, is about half a mile wide, but wider for vessels of our class. The first schooner was lying opposite Red Bank, near opposite; it might have been a little below, on the eastern side of the channel; she was to the westward of us; we had passed to the eastward of her, and were below her a little. I don't think we were more than one hundred or one hundred and fifty yards below Red Bank.

The Palmetto passed the schooner at anchor, before she struck the tug; she passed to the westward, and hadn't anything more

than passed her before she struck the tug; the other vessel at anchor was away down—a little below the fort.

It wasn't a minute, not that, a short time after the tug changed her course, that the big vessel struck her. The blow turned the tug over; the house came up afterwards, and a man came up too; how he kept on, I don't know. I saw one man in the water, and thought he would have been drowned; they threw a line to him, and saved him; the Palmetto was not going ahead then—only what the tide took her; the tug drifted down a good bit; the Palmetto run into the tug, in not as much as two minutes after she passed the schooner at anchor—she passed to the westward of that schooner; the captain came up the companion-way, when I called; he sort of halted in the companion-way, and then came right on deck.

The tug was not across the bows of the big vessel, when I hallooed; she was heading across; she was not more than her own length across, when she altered her course.

his
GEORGE ⋈ WARREN,
mark.

Sworn and subscribed, Dec. 20, 1855.

CHAS. F. HEAZLITT.
U. S. Commissioner.

December 28, 1855.

Present, Mr. Henry, Mr. Gerhard, Mr. Kane, Mr. Johnston.

Elias Hickman, being duly sworn, deposes and says:

I am thirty-six years of age, and by occupation a waterman; have followed the water about twenty-five years. I command the "Dennisville," a sloop. She trades from Cape May to Philadelphia. I have been navigating the Delaware for the last twenty-five years, and know something about the channel; enough to sail my vessel. I saw the collision between the Palmetto and the Bird. I was at anchor, nearly opposite to Red Bank, over to the westward of the channel. I can't tell the size of the Palmetto; she was a pretty large ship. The tug-boat was a very small tug-boat; one of the smallest, I guess. I saw the vessels after they got below the Horseshoe; I don't know how far it was; it might have been a mile. The Palmetto, when I first saw her, was running about W. by S.; I can't tell exactly. I supposed her to be in the channel; I am not able to say in what part of the channel, because I didn't take particular notice; I think to the eastward of the channel; I can't say, as to that; I won't be certain. The tug was on the western side of her. The tug was heading down the river, but over for the Jersey shore; rather on the shore; say two points across the river. I can't say how, after I first saw them, she was heading this course. I did not see the Palmetto alter her course during that time; I saw the tug alter her course. She first put her helm a-starboard, which threw her head over to the eastward; she altered her

course a very short time before the collision. I saw a man in the wheel-house of the tug; I saw him turn the wheel.

Q. What was the position of the two vessels, just previous to his putting the wheel a-starboard?

A. They was both running near on the same line, only the tug was running to the eastward rather more.

The tug altered her course, as I should think, four points, when she put her wheel a-starboard.

Before the collision, I heard a man, and saw a man come out of the pilot-house, on board of the steamship, and say, "Where the hell are you coming to? do you mean to come under our bow?" That was before the tug put her wheel to starboard. At the moment the tug altered her course, she (the tug) was ahead; I can't say how much ahead; I suppose, may be, thirty or forty feet; may be fifty feet; can't say. The tide was ebb. I was on the quarter-deck of my vessel, which was at anchor. The tug was to the westward of the Palmetto before she (the tug) altered her course. At the time of the collision the two vessels were very nigh opposite to me; I was not to exceed one hundred yards from them. The weather was fair; a sunshiny day; not much wind at the time of the collision.

Q. Could you see the stern of the propeller, say for a minute previous to the collision?

No, sir. I was not in such a position as to be able to see whether her wheel was in motion or not.

Q. In my last two questions I referred to the propeller of the steamship, and not to the wheel in the wheel-house. I ask you now, sir, whether you were in such a position as to see whether the propeller of the steamship was in motion or not?

I was in such position to see. It was in motion, and I saw it stop; it stopped a short time before the collision. There was a schooner lying astern of us at the time of collision; she was pretty much ahead of the steamship; the schooner headed bow up stream; she was not in motion; she was at anchor. After the collision the Palmetto passed to the westward of the schooner, very close to her; I should think she struck her from appearance.

Q. What course should the steam-tug have adopted, or what should the steersman have done, at the time you say the tug put her wheel a-starboard, and altered her course to the eastward?

(Objected to as irrelevant, as the question does not state for what purpose.)

He should have put his wheel a-port; that course would have avoided the collision.

Cross-examined by Mr. Kane.

My vessel was some distance out from Red Bank.

Question repeated.

I can't tell you how far out; we were out to a certainty; it may

be 200 yards or 300 yards—something that way. The two vessels, when I first noticed them, were below the Horse-shoe. I know the buoy there; they were below the buoy when I first saw them. I can't tell how far the tug was ahead then; I can't tell anything about that; she hadn't got down to us, so that I could tell. They were coming down. The tug was to the westward.

Were they nearer Eagle Point than the buoy?

I don't know what you mean by Eagle Point.

Mr. K. Eagle Point is the lower point which terminates the Horse-shoe on the Jersey shore.

That I didn't take particular notice. I was on the quarter-deck when I first saw them, and remained looking at them till they struck.

Q. Where were they when you first began to take particular notice of them?

They were above us some distance.

Q. About how far?

I can't say certain; I should suppose a mile. I think they had reached Eagle Point at the time I began to take particular notice. I can't tell, taking the heading of the steamer at the time I first took notice of her, on which side of the schooner at anchor she would have passed. The steamer hauled up round the buoy.

Q. Did the steamship alter her course after you first began to take particular notice of the vessel?

No, sir; she passed to the westward of the schooner at anchor. We were on the western side of the channel; the schooner at anchor was, I suppose, 100 yards, or something like that, to the eastward of us. I can't tell exactly on which side of the channel the tug was at the time of the collision.

Q. On which side was she?

I don't know as I can tell you that.

Q. Tell me as near as you can.

I suppose she was somewhere near in the channel.

Q. Do you mean the middle of the channel?

Yes, sir; she might have been; I can't say for certain; I suppose so.

Q. Did the steamship Palmetto, after she struck the tug, and before she passed the schooner at anchor, alter her course at all?

Not that I saw. At the time the vessels came together they were opposite me.

Q. About 100 yards off?

I suppose so; somewhere thereabouts. The tug was the closest to us when she passed us.

Q. Then the tug passed you before the collision?

Well, partly.

Q. Had the tug partly got by you before the collision?

She was as nigh opposite as I could say. She might have been a little above or a little below, I couldn't say; but nigh opposite.

It looked as if the Palmetto struck the schooner, because I saw the men run over the deck as if to pick up fenders. I mean the men on board the steamer. I couldn't see the schooner at the time the steamer was alongside. The steamer passed to the westward of the schooner.

Q. Why could you not see the men on board the schooner?

When the steamship came along she shut in the hull of the schooner. The steamer passed to the westward of the schooner. The schooner was below us.

Q. When the steamer passed the schooner was not the schooner nearer you than the steamer at that time?

The steamer was nighest us.

Q. Were you not to the eastward of the schooner, and at anchor?

I was to the westward of the schooner, at anchor. The schooner was not at anchor opposite us; she was below us, 100 yards or such a matter; something near that. The steamer passed on the western side of the schooner; on the larboard side; she was heading up.

Q. When the steamer was passing the schooner at anchor, what prevented you from seeing the hands on board the schooner as well as the hands on board the steamer?

(Objected to as a repetition of a previous question already answered.)

Because the steamer was this side of the schooner; on the western side; on the side that I was on.

Q. Could you see the propeller of the steamship at the time of the collision?

I didn't take particular notice of whether I could see it or not; I saw it was not in motion.

Q. How did you see it was not in motion?

I saw by the movement of the water that it had stopped.

The steamship was some distance from the schooner at anchor, when her propeller stopped; I can't say exactly how far. Her propeller had stopped when she got opposite to me, but how long before that I can't say.

Q. At what speed was the Palmetto going, when she run into the tug?

Well, I don't know anything about steamboat speed.

Q. As near as you can tell?

Well, I suppose she was running along ten knots.

She stopped after she got by the schooner; she drifted down with the tide; of course she didn't anchor; she didn't come back again; she drifted down to the mouth of the Schuylkill, or below; I suspect her propeller was then put in motion; I didn't notice her when she got down there; I saw the steamer put out a boat as soon as she passed the schooner.

She struck the after part of the tug; I suppose about 20 feet from the stern, on the larboard side, stem on.

I think at the time of the collision the tug headed down the river, but nearly straight over to the eastward, a little down the river, nearly straight across the bows of the steamship.

The blow shoved the tug right under, side foremost; one man clumb up the bobstay of the Palmetto; the tug sunk, and her wheel-house, or pilot-house, went drifting down the river; I saw one man on the pilot-house; I think the schooner's boat took him off; I saw one man overboard, that they pulled up the larboard side of the steamship; they threw a line to him from the steamer; I didn't take notice which end it was thrown from, but they pulled him in aft; they did not haul him up before they got by the schooner at anchor; they had passed the schooner; I don't know whether they threw the line before or after they passed the schooner; but I saw they had a line over, and saw them pull the man up.

I don't know how far the schooner was from the eastern shore. (Objected to as being answered before.) I don't know how wide the river is there; she was nearer the eastern shore than I was.

I suppose the depth of the channel opposite Red Bank is from five to seven fathoms; there was no shoal water between my vessel and the ship channel.

At the time the steamship passed us, I think the course she was holding would have brought her to the westward of Fort Mifflin; a little, I think.

Re-examined.

I mean at the time of the collision the tug was heading a little across the river, a little down.

ELIAS HICKMAN.

Sworn to and subscribed, Dec. 28, 1855.

CHAS. F. HEAZLITT,
U. S. Commissioner.

January 11, 1856.

Present, Mr. Henry and Mr. Kane.

Walter Liston, being duly sworn, says:

I am about 31 years of age; am a seaman. I have followed the water about 10 years. I am a hand, deck hand, on board the Palmetto. I have sailed in sailing ships as sailor. I saw the collision between the Bird and Palmetto; I was in the fore rigging at the time, sending down the purchase-blocks, which had been used for taking in cargo. I don't know; I didn't pay any particular attention which way we went round the Horse-shoe buoy. I didn't see where the Bird was when we passed the Horse-shoe buoy. I saw the Bird about five (5) minutes before the collision. I saw her a little abaft the fore rigging; she come up abreast of the fore rigging. Our pilot asked them, "where the devil he was going to?" With that, there was a man standing on the deck of the

Bird, with a grey coat on, turned half round to the man in their (Bird) wheel-house; with that, she took a sort of a sheer, and come across the bow of the Palmetto, and as she come our pilot rung the bell to stop, and rung the bells to back before we struck the Bird; that is all I saw of it; she heeled over like, then. The Bird sheered about towards the Jersey shore. She sheered about a minute, I expect, or a minute and a half before the collision; I don't know; about a minute.

Q. When your pilot hailed the Bird, state her position with regard to the Palmetto, more especially her distance from the Palmetto.

She was heading down about the same way; before that, she was hauling in a little. She was about three of her own lengths from the Palmetto when our pilot hailed them; she was off the starboard bow of the Palmetto.

We struck the Bird forward of the wheel-house, but before she went down the funnel of the Bird was over the port bow of the Palmetto; she scraped her forward of the wheel-house, but before she went over; I saw her funnel on the port bow; I was up aloft. The Bird was heading right across towards Jersey shore, right across our bow, when we struck her. I heard nothing said on board the Bird before we struck her; nothing at all. After the collision, I run aft to help to clear away the boat. We got the boat in the water in about six or seven minutes. We tried to lower away the boat on the port side. It is slung over by davits; we had the boat over, but had to haul it in again on account of a schooner on the port bow; the schooner was at anchor. The schooner, at the time of the collision, was a little on the port bow, at anchor, heading up; the tide was running down. We passed that schooner within one or two feet. We were hauling a man up, and had to slack away again, for fear he would be crushed between the two vessels.

Cross-examined by Mr. Kane.

Wm. Harrington had the wheel of our boat. The first mate, Mr. Sheffield, sent me up into the rigging; there was a man, a Swede, working his passage, on the rattlings below me; his name was Charley, I think. Our pilot called out to the Bird; he was front of the wheel-house. There was a man on deck, named Kelly; that was all I saw in the rigging; there were some aft on deck. I did not halloo out; the Swede did not. I was in the starboard rigging; I did not hear any one halloo out beside the pilot. He asked, "where the devil are you going to?" I didn't think I heard any one else halloo; I didn't pay any attention. I didn't pay any attention to see if Kelly hallooed; I didn't hear him. I was in the fore rigging; Kelly was about fourteen or sixteen feet from me; if he had hallooed out, and I had been listening to him, I would have heard him. Kelly was standing abreast of the fore

rigging unreefing the fall, and I was unhooking the blocks; Kelly, the Swede and myself, were all I saw forward. The pilot was abreast of the wheel-house. I looked at the Bird, when I heard the pilot halloo out; I saw her about two or three minutes before he hallooed to her; she was a little abaft the fore rigging, and about six or seven of her own lengths further off when I first saw her, towards the Pennsylvania side; we were ahead of her at the time; she was gaining on us; we couldn't have been going faster; she was gaining on us; she gained on us; the pilot hallooed after that; she was abreast of the fore rigging when he hallooed, and about three of her own lengths off. When he sung out to her, she sheered; I didn't see her sheer before he hallooed; she come in gradually to us, before he hallooed, but when he hallooed she came in more sudden. I don't know the distance we were from the schooner when he hallooed; I know that when I went down aft, getting out the boat, the schooner was then right in our way, and we had to get in the boat again; that was after the tug was sunk; she was down before I left the fore rigging. I saw the schooner lying on the starboard bow before the pilot hallooed, and I thought the Bird was going over to her. I was not long up there when he hallooed; I saw her (schooner) when I first went up into the rigging, and I then thought the Bird was heading for the schooner; I didn't think so at the time; but when she was sunk, I thought maybe she was going over for her.

The Bird was going the same way as us, but gradually gaining in towards us; that would be towards the schooner; we were between her and the schooner. The Bird was going down the same way as us, when I first went into the rigging, gaining into us. I was in the rigging about three or four minutes before the pilot hallooed; before he hallooed, I had unhooked one block, and sent it down on deck. Kelly had hold of a fall, used for hauling goods up; he had hold of it, to unreeve it out of the blocks; I don't know who told him to do so; it was the first job our watch had to do; he was in our watch.

I was in the rigging when the pilot rung the bell to back; he rung before the vessel struck; the Palmetto was in the act of backing before she struck; it didn't take her long to back, fifteen to twenty seconds; he rung one bell, then one bell, then two bells, nearly right in succession; the first was to slack down, the next to stop, and the next to back; they followed in rapid succession. I don't know where the engineer was; his room is abaft the engine, on deck. I heard the wheel make two or three turns, and I knew by the action of the water that she was backing. We were considerably down four or five of our own lengths past the schooner, when we stopped our headway; even then, we drifted with the tide. I don't know, though I went in the boat then. The first mate told me to clear away the boat; I heard him singing out to do it,

and it was my place to run, and I did it. There was no boat on the starboard side; there were two boats on the hurricane deck.

Q. Did the engine continue backing until she stopped her headway?

Nothing else could have stopped it, if she didn't stop it.

I have been in the coasting trade, and in the foreign trade, and in the Richmond trade. I have been on three steamers, the Virginia, State of New York, and this one; I have been in three or four in Scotland, where I belong. Those I have named are propellers, and I am familiar with that sort of vessels.

Re-examined.

I saw the schooner over the larboard bow. When I said in my cross-examination that I saw the schooner on the starboard bow, it was a mistake; I meant larboard bow.

I judge that the Bird was going faster than the Palmetto, because she was gaining on us; that was all I could judge by.

WALTER LISTON.

Sworn to and subscribed, January 11, 1856.

CHAS. F. HEAZLITT,
U. S. Commissioner.

January 14, 1856.

Present, Mr. Johnston, Mr. Kane, Mr. Henry.

January 17, 1856.

Present, Mr. Henry, Kane.

William Harrington, being duly sworn, says:

I am twenty-seven years of age; am a seaman; have been to sea in most all kinds of vessels. I have been in the coasting trade only in this steamboat, this fall. I have followed the sea since I was nine years old, except a year and a half that I was working on shore.

I saw the collision between the Bird and the Palmetto. I was one of the seamen on board the Palmetto. I was at the wheel at the time. I had the wheel since we had left the wharf. Willis was the pilot of the Palmetto. I steered by his direction. I was steering previous to the collision, to the Pennsylvania side, by the mark of two trees that was given me by the pilot. I was steering about ten minutes for the trees, before the collision took place. I don't know how fast we was running. The Palmetto steers well; as good as any other vessel. During these ten minutes, I did not vary from my course at all. Before steering for these trees, I had been steering for League island piers; perhaps for three or four minutes; I don't know how long. The pilot directed me to steer that course.

I saw the Bird before the collision, on our starboard bow, a little

before the fore rigging, about three or four minutes before the collision—it may not be so long—I don't know. The wheel-house of the Palmetto is on the hurricane deck, abaft of the fore rigging. I saw the tug alter her course, by the time our pilot asked him "where the devil are you going; are you trying to get under our bows?" She altered her course right towards our bows. I don't know exactly how long after this the collision took place; it was only a short time as it would take the pilot to stop and back; she had made two or three revolutions back. I could feel by the shaking of the boat, that the engine had stopped. The pilot communicates with the engineer by ringing of bells; the pilot rung the bells. The Bird was about three of her lengths off the Palmetto, when she altered her course off the starboard bow. I saw a schooner on our port side; she was at anchor. After the collision, I could not see how close exactly we passed to her, but it was not more than three or four feet from her. The collision occurred above the schooner; I don't know exactly how far above. After the Bird was sunk, we passed the schooner. After the collision, the engineer of the Bird had got on our bobstay. At the time he came on deck, our captain asked him "what reason he had to run under our bows?" He said, "I told him not to do it." That is all I heard him say. As quick as we were past the schooner, the bell rung to stop the boat. We were drifting right towards the schooner, and our captain asked me which way I had the wheel; (this was after the collision.) I told him the wheel was midships. Then we shifted the wheel to port, and the captain rung the bell to go ahead, and stopped as soon as we were past the schooner.

Cross-examined by Mr. Kane.

I was steering for two trees, on the Pennsylvania side, for ten minutes before the collision. They were below League island; they were between that and Fort Mifflin; I guess the pilot can tell you that; I can't say exactly where they were; I am no pilot; we had no sails set on the Palmetto. I saw two men going up the forward rigging, on the Palmetto, and one man standing at the forward hatch; he had hold of the fall.

The Bird was about three lengths off us, on our starboard bow, when I first saw her; at the time the pilot asked him, where the devil are you going? I had not taken particular notice of the Bird, before the pilot spoke to me. The bell to slack down was rung first; the bell was rung immediately to stop, not to slack down at all. When we want to slack down, we ring only one bell; that means slow. When we want to stop, we ring one again; and if we want to back her, we ring two, one immediately after the other; that means to back her. The engineer rung four bells; two bells to stop, and two right after that, to back.

The Bird altered her course across our bows, as quick as the pilot spoke.

The Palmetto did not strike her at all, 'cause I could feel her; she only rubbed her. I couldn't say where she rubbed her, but I think forward of her wheel-house; but, at the time she went down, the funnel was on our port bow.

When the Palmetto struck the Bird, the funnel was high enough for me to see it; the deck of the Bird was much lower than that of the Palmetto; that is the reason I can't say where she was struck; she must have struck a good bit forward. I did not feel any jar, at all, when they struck. No one had hold of the wheel, besides myself. There was no jerk to the wheel, at all, by the blow.

We passed the schooner on the Pennsylvania side.

I saw that schooner before the collision. I don't know how far we were off when the pilot hallooed to the Bird; I can't tell you, as I did not take particular notice of her. My attention was taken up by the steering and the Bird. I was watching the trees, and the Bird coming in under our bows. After the collision we ported our helm by direction of Captain Baker. If we had not ported our helm, I don't know what side of the schooner we would have gone; I guess we would have gone right into them.

I did not see any other vessel besides the schooner about there. I didn't take notice of any men on the deck of the schooner as we passed her; I did not take any notice of any alteration in her helm; the tide was running down.

The engineer said, "I told him not to do it." He said this after he came to the forward hatch. Some of our men helped him up the bobstay; he came right aft to the hatch, and then said as I have before stated. Captain Baker was in the wheel-house at the time he told me to port the helm; he was not there at the time of the collision. I did not see him before the Bird was down; I did not see the mate nor any others besides those in the fore rigging; I saw one man on top of the wheel-house of the Bird; that was all I did see. The house was knocked loose and floated down the river; I don't know on what side of the schooner it floated; I don't know of a line being thrown out; I was at the wheel, and had to attend to that.

his
WILLIAM ⋈ HARRINGTON.
mark.

Taken, sworn, and subscribed, January 17, 1856.

CHAS. F. HEAZLITT,
U. S. Commissioner.

March 13, 1856.

Present, Mr. Henry, Mr. Gerhard.

Thomas Sheffield, being duly sworn, says:

I am thirty-two years of age; by profession a seaman; have followed the sea fifteen years on all kinds of vessels, schooners, ships,

barques, and steamers. I was the first officer of the Palmetto on the 1st of December last; on that day we were bound to Boston. I saw a collision between the Bird and the Palmetto; Mr. Willett, the pilot, had charge of the vessel going down the river as far as the capes. We were stowing our deck load; I was on the deck load, on the after hatch, stowing it; I was stowing corn; I was on top of it; the men were passing it; I was giving orders. The after hatch is some eighty feet from the bows, abaft the wheel-house. I first saw the Bird when we got down to the Point House. As we passed round the Horse-shoe we kept very little to the westward, some three minutes, so as to clear Red Bank bar, then straightened our course down the channel; we were heading for the trees on Fort Mifflin; we steered that course four or five minutes, when the Bird bore down on us as though she was going to speak us; she was then on our starboard, off our fore rigging; he straightened his course down the channel with us. The pilot, Mr. Willett, as we were coming down and drew near to him, asked him "if he was going to cross our bow, or where he was going;" at that instant a man forward on board of the Bird spoke to the man at the wheel on board of the Bird; I did not understand what he said, but I saw him make motions; at that instant the Bird came athwart our bow—that is all.

Q. You say the Bird came athwart your bow; had either and which vessel altered her course previously to her doing so?

A. Our vessel didn't seem as though she altered her course at all; the other vessel altered her course. At the time of the collision the Bird was not on the same course she was on; when the pilot spoke to her she altered her course more to the eastward; it was done so quick I could not see how many points she altered her compass; I should say five points. I think he put his wheel wrong; it was done instantly; he must have done so, else the collision never would have taken place. I was some five or six feet from the deck, in the main hatch, on the top of some corn, when the pilot spoke. At the time of the collision I was on the forecastle; I run right forward, and got there just as she struck. I commenced to run as soon as the pilot spoke; it took the attention of every one. There is a topgallant forecastle to the Palmetto, and I jumped on it; when I got there the Palmetto had not struck the Bird. I saw the course the Bird was on before she was struck, and she was heading to the eastward, to the Jersey shore. The Bird was struck just abaft the smoke-stack, just abaft midships. Our bobstays took the Bird, took the engine-house off. Our stem took the plank-shear, rolled her over like; she filled with water and sunk. I can't say there was an explosion under water; her bow and smoke-stack was out of water when I went after the boat. Our quarter boat was swung in; we swung it out, got all ready to lower, and we came alongside of a schooner at anchor; we left her on her larboard side;

we passed very close to her; we went so close we had to haul our boat in again. I saw the wheel-house of the Bird on our larboard quarter while I was at the boat; it was about 60 feet from us; there was one man on it. I heard the signal bell of the engine of the Palmetto rung when I was in the after hatch; at first there were two bells rung to stop her and two to back her; likewise the speed bell, to back the speed, or to go ahead. The Palmetto's propeller turns the same as the sun, from the left to the right. I have been on board the Palmetto for about ten months. I have been in a propeller before in the city of Boston. Backing the Palmetto, it will always throw the stern to port; a right-handed wheel, as we call it, will throw the stern to port. The effect of her backing at this time threw her stern to the eastward—that is, port. She may have continued backing for about two minutes. I was busy at the time; it may not have been so long. She continued backing until it slewed to the eastward about 4 points across the tide. I was in the boat then; I can't say what was done.

Q. If the Palmetto and the Bird had continued on the course they were on at the time your pilot hailed the Bird, would or would not a collision have occurred?

A. It would not have occurred.

Q. Would they have gone near each other?

A. They would have gone 50 or 60 feet clear.

Cross-examined.

Just before the collision I saw a man in the bow of the Bird speak to the man at the wheel. I judged he spoke; he turned round, made motions; I could see his lips move. I did not hear him speak at all.

THOMAS SHEFFIELD.

Sworn and subscribed, March 13, 1856.

CHARLES F. HEAZLITT,
U. S. Commissioner.

John Kelley, being duly sworn, says:

I am twenty-eight years of age; I have followed the sea more than ten years; have been on board the Palmetto four months as a deck hand. I was on board on the first of December at the time of collision. I was over in the tackle fall, which were rove forward. I first took notice of the Bird about a minute and a half before the collision. I did not see her before that time. She was then right abreast of the fore rigging, on the starboard side. I don't know her course. She seemed to come right in across us, keeping towards the Jersey shore more than we did. I did not see either vessel alter their course, not at that time. When the pilot of the Palmetto came out of the pilot-house I saw the Bird alter her course then. She altered her course more towards Jersey shore,

more across the river. I don't know where we struck the Bird. I did not see her go down. I saw the engineer of the Bird on the Palmetto; he was a colored man; he got hold of our vessel by the bobstay; I helped to pull him up; it was about ten minutes after the collision. We were engaged in putting out boats; that is the reason he stayed there so long. I don't know if any one offered to pull him up before. We hauled him up by a rope lowered down; he made a bow-line knot and got into it himself. He did not say anything to me. I don't know that he said anything to anybody that I heard. I don't know what I was doing before I threw a rope to him. I helped to lower away the quarter boat. I did not get in her when she was lowered. I saw the engineer when he was hauled on deck; he appeared to be frightened.

Cross-examination declined.

his
JOHN ⋈ KELLEY.
mark.

Sworn and subscribed, March 13, 1856.

CHARLES F. HEAZLITT,
U. S. Commissioner.

March 27, 1856.

Mr. Kane being engaged, adjourned till to-morrow evening at 7 o'clock.

March 28, 1856.

Present, Mr. Henry, Mr. Kane.

George R. Preston, being duly sworn, deposes and says:

I am twenty-five years of age; am clerk of the Palmetto, and have been so for some time. I was on board on the first day of December last, at the time of the collision.

I noticed the Bird some fifteen or twenty minutes before the collision took place; it was at the portion of the river called the Horse-shoe, I think. She was steering straight down the river. I have no knowledge of the buoy there; the Palmetto was standing to the left bank of the river. I am not a seaman by profession. I continued to observe the Bird only some few moments. I only noticed her then, because her hull was painted black, which I had not noticed before, and on account of racing, or at least making her full speed. After first seeing her, I went to my own room for the purpose of making out my manifest or freight list. I heard our pilot singing out from our pilot-house. I almost always notice it, in order to get the names of vessels going down the river, in order to report, and he often hails them. I came out of my room and attempted to look over the boats on top of our house, and I could see nothing. My room is on the left-hand side of the ship. I went forward to the engine-room; I looked in and saw there was

some movement, and Mr. Penn, our engineer, was just going below. I went forward and saw the flag-staff of a boat just coming under our bow; I then saw the steam-tug float along on the left-hand side. I went immediately aft, in order to help the men get down the boat. After doing that I went forward and saw a man on our bobstay; one sailor and myself immediately got over for the purpose of assisting him up; we found he could not help himself, and got a rope over; he put it under his arms, and by that means, with our help, we got him on to the deck. This man proved to be the engineer of the Bird. I only know that he was the engineer from what he said himself; he said he was the engineer; I had conversation with him after he came on deck. The first question I asked him was, how many there was on board their boat? He made the answer: "I told him he would run into the boat." He got off the forecastle deck, and we led him to the cook's room, and I repeated the question again: "How many there were on board the boat?" He said "four." I then heard him say, that he told the pilot "that he would get afoul of that boat." I then went aft in order to see what success our boat had met with in picking up the rest of the crew.

The man could have got out of the bobstay without assistance; we were some time coaxing him to get up.

There is an after cabin where the captain sleeps, and where we all dine. There is a house immediately forward of the after hatch, running from the after hatch to the forward one; this house is in the middle of the ship. My room is the second room on the left of the ship from the after hatch. There is what we call the pump-room between my room and the engine-room; and these boats that I tried to look over are stowed over the engine-room, on top of the house.

When I saw the tug at the Horse-shoe she was some considerable distance from us; how far I could not say.

The next time I saw her I saw a flag-staff going across our bow; it was just going under a foot to the right of the bowsprit, moving past the bow of our vessel, and under the bowsprit. I saw the tug roll over. She rolled over directly, I should say a little on the left side. I was just abaft the fore rigging when I saw the flag-staff go by. I could not see at first any part but the flag-staff. I did not see her smoke-stack at all.

Q. Do you feel positive that the flag-staff of the tug went under your bowsprit?

A. Yes, sir, it had that appearance from where I stood.

Cross-examined.

I don't know where the Horse-shoe buoy is.

I am not sufficiently acquainted with the locality to state exactly

more across the river. I don't know where we struck the Bird. I did not see her go down. I saw the engineer of the Bird on the Palmetto; he was a colored man; he got hold of our vessel by the bobstay; I helped to pull him up; it was about ten minutes after the collision. We were engaged in putting out boats; that is the reason he stayed there so long. I don't know if any one offered to pull him up before. We hauled him up by a rope lowered down; he made a bow-line knot and got into it himself. He did not say anything to me. I don't know that he said anything to anybody that I heard. I don't know what I was doing before I threw a rope to him. I helped to lower away the quarter boat. I did not get in her when she was lowered. I saw the engineer when he was hauled on deck; he appeared to be frightened.

Cross-examination declined.

his
JOHN ⋈ KELLEY.
mark.

Sworn and subscribed, March 13, 1856.

CHARLES F. HEAZLITT,
U. S. Commissioner.

March 27, 1856.

Mr. Kane being engaged, adjourned till to-morrow evening at 7 o'clock.

March 28, 1856.

Present, Mr. Henry, Mr. Kane.

George R. Preston, being duly sworn, deposes and says:

I am twenty-five years of age; am clerk of the Palmetto, and have been so for some time. I was on board on the first day of December last, at the time of the collision.

I noticed the Bird some fifteen or twenty minutes before the collision took place; it was at the portion of the river called the Horse-shoe, I think. She was steering straight down the river. I have no knowledge of the buoy there; the Palmetto was standing to the left bank of the river. I am not a seaman by profession. I continued to observe the Bird only some few moments. I only noticed her then, because her hull was painted black, which I had not noticed before, and on account of racing, or at least making her full speed. After first seeing her, I went to my own room for the purpose of making out my manifest or freight list. I heard our pilot singing out from our pilot-house. I almost always notice it, in order to get the names of vessels going down the river, in order to report, and he often hails them. I came out of my room and attempted to look over the boats on top of our house, and I could see nothing. My room is on the left-hand side of the ship. I went forward to the engine-room; I looked in and saw there was

some movement, and Mr. Penn, our engineer, was just going below. I went forward and saw the flag-staff of a boat just coming under our bow; I then saw the steam-tug float along on the left-hand side. I went immediately aft, in order to help the men get down the boat. After doing that I went forward and saw a man on our bobstay; one sailor and myself immediately got over for the purpose of assisting him up; we found he could not help himself, and got a rope over; he put it under his arms, and by that means, with our help, we got him on to the deck. This man proved to be the engineer of the Bird. I only know that he was the engineer from what he said himself; he said he was the engineer; I had conversation with him after he came on deck. The first question I asked him was, how many there was on board their boat? He made the answer: "I told him he would run into the boat." He got off the forecastle deck, and we led him to the cook's room, and I repeated the question again: "How many there were on board the boat?" He said "four." I then heard him say, that he told the pilot "that he would get afoul of that boat." I then went aft in order to see what success our boat had met with in picking up the rest of the crew.

The man could have got out of the bobstay without assistance; we were some time coaxing him to get up.

There is an after cabin where the captain sleeps, and where we all dine. There is a house immediately forward of the after hatch, running from the after hatch to the forward one; this house is in the middle of the ship. My room is the second room on the left of the ship from the after hatch. There is what we call the pump-room between my room and the engine-room; and these boats that I tried to look over are stowed over the engine-room, on top of the house.

When I saw the tug at the Horse-shoe she was some considerable distance from us; how far I could not say.

The next time I saw her I saw a flag-staff going across our bow; it was just going under a foot to the right of the bowsprit, moving past the bow of our vessel, and under the bowsprit. I saw the tug roll over. She rolled over directly, I should say a little on the left side. I was just abaft the fore rigging when I saw the flag-staff go by. I could not see at first any part but the flag-staff. I did not see her smoke-stack at all.

Q. Do you feel positive that the flag-staff of the tug went under your bowsprit?

A. Yes, sir, it had that appearance from where I stood.

Cross-examined.

I don't know where the Horse-shoe buoy is.

I am not sufficiently acquainted with the locality to state exactly

where the collision occurred. I should think it was above—that is, this side of Red Bank.

I should say that it was ten or fifteen minutes, as near as I can think, from the time I saw the boat till this collision occurred. I have no means of fixing that time. The tug, when I first saw her, was about the middle of the Horse-shoe, as near as I can think. She was ahead of us; I can hardly tell how far; she was going in one direction, and we in another. She was bound straight across the Horse-shoe, and we were heading over to the left shore of the river when I first saw her.

Q. You have said that the tug was ahead of you, holding a course straight down the river at the time you were holding?

Question withdrawn.

When I came on deck, after I heard the pilot call, we were heading right down the stream. I don't remember seeing a schooner at anchor. I didn't notice them at all. I remained on deck after the collision, over half an hour at least. There was a schooner that I think was under sail, which we passed a few minutes after the collision; at any rate, her mainsail was up. I think the collision did not jar our vessel or shake it.

The time was very short after I saw the flag-staff until I saw her floating past. I don't think it was as much as a minute; it was all done at once.

I saw the hull of the tug floating on the left side before she sunk. She sunk just about the fore rigging; it was the hull and not the house.

I think the pilot-house separated from the hull before she sunk. I saw the boat as it came round the bow, tip down, bow foremost; I saw the wheel at the stern of the boat as it went down, making revolutions.

I can hardly say the time that elapsed from the time I came on deck until the boat went down. I didn't run, I walked. I saw nothing, and therefore didn't hurry. I looked over the left-hand side, and forward on that side, and then I went forward, and when I got to the forward rigging I saw the flag-staff.

I came out of my room for the purpose of seeing what vessel it was.

We passed on the right-hand of the schooner; we passed the schooner to our left; I don't know how close we passed to her. I didn't notice the schooner particularly, as I was thinking of the disaster at the time.

I didn't notice any change in our own heading after the collision, and before we passed the schooner.

I don't remember who were forward with me; there were sailors; our sailors were forward; one of them I think was in the forward rigging.

I am not aware that the river takes a curve below where this

collision took place; I dont remember the course of the river below the Horse-shoe.

I don't know where Fort Mifflin is.

Q. When you say that your vessel, at the time of the collision, was heading a course straight down the river, do you mean that such a course would have taken her straight down the river as far as you could see; or do you mean that she was merely at that time in the middle of that portion of the channel in which she then was?

A. She was heading down, as far as I could see, with the river; I mean, not noticing the land, but the water.

I am not capable of judging whether she was in the channel-way; she was, I think, nearer the Pennsylvania shore than the Jersey shore at the time of the collision.

I don't know exactly where League island is. I know where Red Bank is when we pass it. I don't know whether we had passed League island at the time of collision, because I don't know where League island is. I think we had not passed Red Bank at the time of the collision. I don't know where Eagle Point is. I am not much acquainted with those localities, from the fact that I am below most of the time. I know the Horse-shoe, from the fact that it was pointed out to me the first trip I ever made, by our clerk, and we had passed it.

I should not think we were bearing to one shore or the other; we were going, I should think, as I said before, direct down the river; we were not heading for either shore as far as I could see. I have been clerk on that boat since October. I have not been in the Delaware river before. I have been passenger in sailing and steam vessels before, but not in the Delaware river.

I was a clerk and salesman in a commission-house in Boston before that time.

GEORGE R. PRESTON.

Sworn to and subscribed, March 28, 1856.

CHAS. F. HEAZLITT,
U. S. Commissioner.

April 24, 1856.

Present, Mr. Henry and Mr. Kane.

Enoch Willets, being called, says:

I was pilot of the Palmetto.

Mr. Kane objects on the ground of interest.

Mr. Henry produces release from the owners of the Palmetto, dated 12th March, 1856, hereto annexed, marked A.

The witness is sworn:

I am 40 years of age; by occupation a Delaware pilot; have been so since I was 21 years of age, 19 years ago. I am acquainted

with the navigation of the river Delaware. I have been pilot of the Palmetto since 19th April, 1855. I was in charge of the Palmetto on the first day of December last, at the time of the collision with the Bird. When we left the wharf the Bird was about the navy yard, on our starboard bow; I took no more particular notice of her until we were just below Gloucester Point, when my attention was called to her by seeing her on our larboard bow; she then sheered right across our bow, when about eight times her length ahead of us; she went down across the Horse-shoe; we went down round the buoy, and hauled up for the piers on League island; we kept that course for about four minutes, then altered our course more down the river, for the trees that stand on Hog island. At the time we were abreast of the buoy of the Horse-shoe, the tug Bird was then two or three hundred yards on the Pennsylvania side of us. The next that I took notice of the Bird she was below the Horse-shoe steering about two and a half points across our bow; she was still on our starboard side; she kept on steering so until within three times her length of us; she then altered her course down the river, nearly as our boat was going, but still kept gradually nighing down to us. She, at this time, was about twice her length on the starboard bow, and about one length ahead. I stepped out of the wheel-house, and hallooed to them; asked them, "Where in the devil they were coming to—if they wanted to get under our bow?" She then sheered suddenly across our bow. I jumped into the wheel-house, rang the bells to stop and back. The next I saw of her, she was under our bow, about going down.

Q. At the time the Bird was running about two lengths off your starboard bow, what was her course, as compared with your vessel?

A. Her course was about half a point to the eastward or southward of ours. It would be to the southward, as we were heading about west, I presume. I mean her course was to that extent more towards the Jersey shore.

Q. How long could those two vessels have kept on that course without coming into collision?

A. Fifteen or twenty minutes.

Q. What, in your judgment, was the difference in speed between the two vessels?

A. From three-quarters of a mile to a mile an hour. We were gaining on them. The Palmetto drew 18 feet of water; she had a heavy cargo, and was running about 9½ knots; tide and all, 10 knots. We have to turn her pretty fast to go 10 knots.

Q. Please state all you saw and heard on board of the Bird, *of* anything, just previous to the collision.

A. I saw the man in the wheel-house looking at us; his face turned towards us. I saw him lift his hand to our man steering. I saw the engineer go forward, part way from the engine-house, and speak to him. I heard some one on board say, "Never mind!

let her go!" heard them say, when they got under our bow, that is, after we were together, "Hard a-port! Hard a-port!"

Q. Do you recollect that day seeing any vessels anchored in the stream near the place of collision?

A. Yes, sir; there was a sloop and a schooner—the sloop on the starboard beam, and the schooner on the larboard bow. The Palmetto had been from eight to ten minutes on the course she was standing when the collision took place. The schooner at anchor was about two points on our larboard bow. We passed her after the collision; we passed within two or three feet of her.

Q. How did you come to be so near her?

A. In stopping for the Bird and backing—backing heaves our stern round to the port; that put us across the tide, so that it would have drifted us down, across the bows of the schooner, if the captain had not started our boat ahead.

Q. After the Bird crossed the Horse-shoe, what part of the channel or river was she in?

A. She was close to the Pennsylvania shore—she went down in the channel to the westward of the Horse-shoe, at high tide, some 8 or 10 feet. At about abreast of Buttermilk Tavern, she began to bear down on the Palmetto. Buttermilk Tavern is opposite to Eagle Point, rather below it, on the Pennsylvania side. Then, when within twice her length of us, on our starboard bow, and her length ahead, she straightened her course. The day was fine, clear weather, and nearly calm. I was in the wheel-house from the time I left the wharf. I have steered a steam-tug propeller—steam-tugs like the Bird. The Bird is about 70 feet long—I don't know her tonnage—and draws, probably, 6 to 7 feet water.

Q. What are their steering qualities?

A. Very good.

Q. Does or does not, as a general rule, a short vessel, propelled by steam, answer her helm quicker than a vessel of greater length?

A. Yes, sir; the Bird would turn round four times to our once.

Q. What are the steering qualities of the Palmetto?

A. She steers well; her length is some 180 odd feet. She is rather slow to turn, when you put the wheel hard a-port or hard a-starboard, on account of her length.

Q. When you hallooed to the tug Bird, had she, or had she not, time to have got out of your course?

A. Yes, sir, plenty. I have run in a boat about the size of the Bird; she is called the Wm. Sprague, and belongs to Boston. She was built in Philadelphia.

Q. If a vessel of the description of the Bird was to put her helm hard a-port, how long would it take her to alter her course four points?

A. It would be a very short time; not more, I should think, than 10 or 12 seconds, because they would turn all the way round in

less than a minute. I mean by turning round, let her lie still, setting the engine going as hard as it can, and it will turn all the way round, bringing her head back again to the same place.

Q. How long would it have taken you to have altered the course of the Palmetto four points?

A. It would have taken from three to five minutes.

The cross-examination of Mr. Willets is continued till Thursday, 8th May next, at 3 o'clock p. m.

May 8, 1856.

Present, Mr. Henry, Mr. Kane, and the witness.

Adjourned till to-morrow, at 2 p. m.

May 9, 1856.

Present, Mr. Henry, Mr. Kane, Mr. Molloy, and the witness.

The cross-examination of Mr. Willets is proceeded with.

The collision occurred just above the piers at League island; just about the length of our ship. Those piers are nearer the lower end than the upper. It occurred about mid-channel; mid-channel is not at that point, midway between both shores; it is nearer League island shore than the Jersey shore; I cannot tell how much nearer. The channel at that point, I should think, was half a mile; I should judge so; I don't know from actual knowledge. There is a ridge in it; there is deep water to the eastward and westward; there is not less than five fathoms on the ridge. The ridge, there, lies near the eastern or New Jersey side.

We were bearing down for a bunch of trees standing on Hog island, at the time of the collision, and just before. We had been holding that course from 8 to 10 minutes before the collision. During that 8 or 10 minutes we were holding about the same speed, which was, I should think, 9½ to 10 knots, counting tide and all. The tide was just ebb; it hadn't got to running down its full strength, at the time of the collision. The collision was a little before 12 o'clock, I think. We were just below the buoy of the Horse-shoe, just above Buttermilk Tavern, when we lay on our course for Hog island. The last course before the one for Hog island was for League island piers, keeping the piers a point or a point and a half on our starboard bow. When we lay the course for League island piers, we were just rounding the buoy; we lay our course then so as to have the piers on a line with our starboard cat-head. We made about the speed on that course as we did on the Hog island trees. She might have gone a half-knot slower or faster at any time, and I not know it. We held the League island course for about four minutes. Captain Baker gave the first order to go ahead after the collision. At the time he gave the order to go ahead, he gave an order to the man at the wheel; this was before passing that schooner at anchor. What that order was, I do not know, any more than what Captain Baker told me.

Re-examined.

The collision was near abreast of the steamboat slip at Red Bank; if anything, a little below it, and nearer to the Pennsylvania than the Jersey shore.

Question. When you hallooed to the Bird, was there any reason why the Palmetto could not have put her wheel starboard?

(Mr. Kane objects, as leading.)

Answer. Yes, sir, there was a schooner at anchor, on our larboard bow, and if we had put our wheel starboard, we would have gone into her.

Question. When the Bird altered her course across your bows, could you, or could you not, by altering the course of the Palmetto, have avoided the collision?

(Mr. Kane objects, as matter of opinion of the person having the steamship in charge.)

Answer. No, sir; the best we could do, was to stop. During the course of the Bird down the river, I think her speed varied; I thought she was racing; I thought, I do not know, that she was cut off, and waited for us to come up.

Re-cross-examined.

The place of the collision was some two or three times the length of the Palmetto, and she is 185 feet long. That schooner at the time of collision was on our larboard bow; so close that if we had put our helm to starboard, we would have run into her. When we passed that schooner, those on board did not, to my knowledge, shift their helm to give us more room; I do not remember her swerving; we passed within two or three feet on her larboard side. If we had held the course we were on before the collision, we should have passed her to the larboard about the length of our ship. Our vessel was never considered a fast vessel; we are limited to fifteen pounds of steam; our fastest speed at that pressure on river, slack water, we put at nine knots.

ENOCH WILLETS.

Sworn to on the 24th April, and subscribed 9th May, 1856.

CHAS. F. HEAZLITT,
U. S. Commissioner.

William Penn, being duly sworn, says:

I am 29 years of age, and am the first engineer of the Palmetto; have been so for a year; have been in the employ for two years; I was on board the day of the collision. Just previously to the collision, I was standing in my engine-room door; I head our pilot hail the Bird; halloo to the man and ask him where he was coming; by that, I went in my engine-room, when the bell rung to slow her, stop and back; the engine was reversed as quick as it could be done; these bells were rung as close as they could be rung.

The engine was reversed and worked back for three or four minutes, then it was stopped, and went ahead again, for, I suppose, three to five minutes; we then lay there for some time.

Cross-examined by Mr. Kane.

I have been an engineer the last nine years; not first engineer for that length of time; have been first engineer for the last five years; first engineer on the tow-boat Rescue, on the steamship West Wind, on the City of Richmond and City of New York, City of Boston and Palmetto.

I was standing in my engine-room door when the pilot hallooed. I had been standing there, I suppose, a minute; before that time I had been in the engine-room. The pilot, when he hallooed, was standing alongside of the wheel-house—right alongside of it; he had just stepped outside of the house; I saw him step out and halloo. The wheel-house is about 20 to 25 feet from me. My engine-room is about 20 feet astern of the wheel-house. The pilot was not facing me; he kind of looked off at the boat that was opposite to us when he hallooed—she was on the starboard side. I saw the boat from where I was standing; she was 40 to 50 yards from the starboard side of our vessel, I should judge.

When we receive an order to slow the engine, we shut our steam off the throttle valve. When we receive an order to reverse, we reverse from the forward motion to the back, by the movement of a lever, by the hand. To back, we give her steam again, after she is reversed, by moving another lever.

Q. Suppose the orders are given to you in rapid succession—slow, reverse, and back—do you execute the orders in the same rapid succession they are given to you?

A. Yes, sir; and the vessel backs so soon as she overcomes her headway.

The Palmetto is a propeller. I saw one man standing forward on the Bird. I saw the engineer on board, standing by the engine-room. I did not observe any others.

Our engine-room is amidships, and is about 18 feet wide.

Re-examined.

Q. What steam were you carrying that day?

A. 13 to 14 pounds; our limit by law is 15 pounds. We carried 13 pounds. We carry generally from 12 to 13 pounds. Our general head of steam is from 10 to 13 pounds. I don't recollect how many revolutions we were making; but generally with that amount of steam, in still water, that would give us 49 or 50 revolutions, and that would make between 9 and 10 knots in still water.

The second and third engineers were both in the engine-room; they were standing below. The second and third engineers worked

the levers. I took part in the working of the engine-room. When the backing bell rung, I gave her steam myself. I was then down by the engine. It takes two men to work the engine; I mean in reversing.

W. A. PENN.

Sworn and subscribed, April 24, 1856.

CHAS. F. HEAZLITT,
U. S. Commissioner.

May 20, 1856.

Henry Virden, being duly sworn, saith:

I am a branch pilot of the river Delaware; have been a pilot since 1836. I am forty-one years of age. I am well acquainted with the river Delaware, and am now in command of the tow-boat America.

Question. State the course of a vessel drawing 17 or 18 feet water, going down the river Delaware, say from Gloucester Point, as far as Red Bank pier?

The ship ought to be in the middle of the river from the Point House pier down to the Horse-shoe; after going round the buoy, she should shape her course, and leave the piers on League island on the starboard bow; and as she draws near those piers, she generally draws in towards the Pennsylvania shore, on account of the shoal, or what we call Red Bank bar; the next course would be about the middle of the river down to the fort; a little above Red Bank, the centre of the channel is nearer the Pennsylvania shore.

I have seen the tug Bird; she is a small boat; I don't know her tonnage; I have never been on board a boat of the size of the Bird; I have sailed in a boat a size larger. I was on the Tiger, a boat of 120 tons or thereabouts. The steering qualities of propelling steam-tugs are very good. I have seen the Bird pretty often. I know the Palmetto.

Question. Supposing the Palmetto and the Bird were both running the same direction down the river, their courses varying not more than from a half to one point of the compass, the Palmetto running one mile an hour faster than the Bird, and the Palmetto was to overtake her, and they were to come into contact, what in your opinion, sir, would be the effect of the collision?

(Mr. Kane objects, that it is a mere matter of opinion; and second, because the question is one which admits of no answer.)

I should like to know their courses, whether they varied to port or starboard.

Mr. Henry. I mean, for greater clearness, suppose the Bird was off the starboard bow of the Palmetto, the Palmetto heading about due west, and the Bird heading about half to one point southward of that course.

Witness. What distance off the starboard bow?

Mr. Henry. The length of the Bird, say 60 feet, off the starboard bow.

It wouldn't touch her at all; vessels steering half a point would come together very slowly I think.

Question. Suppose the two vessels were running the courses I have described, the Bird her own length off the starboard bow of the Palmetto, and about her own length ahead, what would be the result of a collision between two such vessels?

Answer. I can't answer that; I don't know.

Question. Suppose the Bird was running about the same course, or very nearly so, with the Palmetto, her own length (60 feet) ahead of the Palmetto, and her own length (60 feet) off the starboard bow of the Palmetto, at the respective rates of speed I have mentioned, and the Bird was then to put her helm hard a-port, would there not, in your opinion, any collision occur?

Answer. I should say there would be no collision in that case.

No cross-examination.

HENRY VIRDEN.

Sworn to and subscribed, May 20, 1856.

CHAS. F. HEAZLITT,
U. S. Commissioner.

A.—C. F. H.

Know all men by these presents, that we, Henry Winsor of Philadelphia, merchant; Obed Baker of the city of Boston, shipmaster; Edward Whitney of the same place, merchant; Alfred Winsor of the same place, merchant; William Sprague of the same place, merchant; Edward S. Tobey of the same place, merchant; and George M. Soule of the same place, merchant; the said Henry Winsor, Obed Baker, Edward Whitney, Alfred Winsor, William Sprague and Edward S. Tobey, being at the time of the happening of a certain collision between the steamship Palmetto and the steam-tug Bird, in the river Delaware, on the first day of December, 1855, the sole owners of the said steamship Palmetto, and the said George M. Soule having acquired an interest in the said steamship Palmetto since the happening of the said collision, as well for and in consideration of the sum of one dollar to us in hand paid by Enoch Willetts, pilot of the said steamship Palmetto, at and before the sealing and delivery hereof, the receipt whereof is hereby acknowledged, as for divers other good causes and valuable considerations us thereto specially moving, have remised, released, quitclaimed and forever discharged, and by these presents, for ourselves, our heirs, executors and administrators, do remise, release, quitclaim, and forever discharge the said Enoch Willetts, his heirs, executors and administrators, and every of them, of and from all and all manner of action and actions, cause and causes of

action, suits, debts, dues, duties, sum and sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, agreements, promises, variances, damages, judgments, extents, executions, claims and demands whatsoever in law or equity or otherwise howsoever, which against the said Enoch Willetts we ever had, now have, or which we, our heirs, executors, administrators hereafter, can, shall or may have, for, upon or by reason of any matter, cause or thing whatsoever, from the beginning of the world to the day of the date of these presents.

In witness whereof, we have hereunto set our respective hands and seals, this twelfth day of March, 1856.

OBED BAKER, [L. S.]
EDWARD WHITNEY, [L. S.]
By SPRAGUE, SOULE & Co.,
ALFRED WINSOR, [L. S.]
WM. SPRAGUE, [L. S.]
E. S. TOBEY, [L. S.]
GEO. M. SOULE, [L. S.]
HENRY WINSOR. [L. S.]

Sealed and delivered in the presence of us. (The words "on the river Delaware," in the 11th and 12th lines of first page, being first erased.)

GEORGE R. PRESTON,
ERASTUS B. SAMPSON.

Afterwards, to wit, on the seventeenth day of April, A. D. 1857, the court make and pronounce their opinion in the words following, to wit:

The facts of this case, as they appear to me upon a careful review of the evidence, are these:

The steamship Palmetto was pursuing her regular course by the channel-way of the Delaware, from Greenwich Point towards the mouth of the Schuykill. The Bird, a steam-tug of light draught, took the more direct line between the same points across the Horseshoe shoal. One was upon the arc, the other upon the chord, and a collision took place between them where their two paths intersected, the Palmetto till then having been behind the Bird. Each vessel had a right to the wake she followed.

Which is to be regarded as in fault? The principle on which all the rules of navigation are founded, is this: that the vessel which can most easily avert a collision is the one whose special office it is to avert it. The overtaking vessel having the greater speed, has the more absolute control of her position and movements; she must take care so to pass the other as not to run into her; she may do this on either side, if it can be done in safety; she may even cross the other's bow, but she does so at her peril; if there be a doubt whether she has room and speed enough to cross

without impinging, she must be content to pass under the other's stern, even at the hazard of losing time and ground.

And such being the rule which should govern the overtaking vessel, the vessel overtaken is bound to hold her course, so as not to baffle the other's manœuvre. The exception, if it may be called one, applies to the case of a collision already imminent, in which the extremity of peril suspends all law but that of self-preservation.

The decree must be for the libellant with costs, with reference to Commissioner Heazlitt to assess damages.

Afterwards, to wit, on the 25th day of September, A. D. 1857, the said commissioner makes and files his report in the words following, to wit:

In the District Court of the U. S., in and for the E. D. of Penn.—
In Admiralty.

MOLLOY
vs.
THE PALMETTO.

To the Hon. John K. Kane, Judge of said Court:

The undersigned, to whom it was referred to assess the damages sustained by libellant in above case, respectfully reports:

That a decree was entered against the respondents, on the seventeenth day of April, 1857.

That on the 18th day of July, 1857, and on divers days subsequently thereto, he was attended by R. P. Kane, esq., for libellant, and M. P. Henry, esq., and J. F. Johnston, esq., for respondents. Witnesses were examined, whose depositions are herewith filed.

The action is for collision, and the libellant's claim is for the expenses of raising and towing the vessel to a place of safety, for loss of furniture, and for the necessary repairs to place her in the same condition as it was at the time of the collision. This claim seems well founded in law and upon principle, and to this claim the attention of all the witnesses has been directed.

First. The libellant's claim as expenses of raising.....$500
And of towing..... 15

$515

There is no evidence to lessen the value of these services, and the amount paid, as testified to by Calvin H. Barker, is allowed as a proper measure of compensation for this service.

The next claim is for repairing the machinery, and placing it in the same condition as before the accident.

After the raising of the boat, it was taken to the works of Reaney, Neaffie & Co., and was there examined by Jno. G. Neaffie

and Joseph L. Parry, who made a minute survey of the machinery, and estimated the damage at $1,161. This examination was minute, and every item was specified in an estimate made and signed by them, and was subsequently sworn to. This estimate is annexed to the depositions.

This survey was made in May, 1857; the boat was raised in July, 1856, and from that time down to the time of survey she was suffered to remain in an exposed situation, no repairs being made upon her. During this time the machinery was deteriorating from causes mentioned by the witnesses. Notwithstanding this exposure the libellants claim to be allowed the full extent of damage on the 27th May, 1857; and the question now simply is, for the correctness of the estimate is not questioned, whether the libellant used due diligence in repairing the damage. It is in evidence that he made the contract with Baker to raise the vessel; that it was delivered at the dock of R., N. & Co., by his agent, where it has remained ever since. The survey was made at his request, and the fair presumption, therefore, is, in the absence of other testimony, that the boat was in his possession. The respondents could not, therefore, repair without his consent, even if they had been so disposed; and it was his duty to repair at the earliest practicable moment, and thus avoid further loss. The boat was suffered to remain in an exposed condition for upwards of thirteen months before the estimate was made, and in this time, according to the testimony of these experienced witnesses, has deteriorated some $250. Upon this testimony I cannot report that the libellant has used due diligence, but is guilty of such laches in making his repairs as will exonerate the respondents from the liability for increased damages, say $250.

The estimate was.....	$1,161 00
Deterioration	250 00
	$911 00

Which sum is awarded for damage to machinery.

The hull was surveyed by Byerly, Lynn & Craig, experienced ship carpenters, in May, 1857. Byerly & Lynn examined her the second day after she was brought to Reany, Neaffie & Co.'s wharf, and then estimated the damages at $705, though "the vessel was not then in a very good condition for examination." The last examination, in May, by all three, resulted in an estimate of damages amounting to $821.

Craig, in speaking of the second examination, says: "If the vessel had been put in repair forthwith after she was raised, the damage would not be as much as now; the longer she lies exposed to the sun the worse she will be;" and estimates the deterioration at from $140 to $150.

Lynn, who assisted in making the first examination, says, the damages have been increased $100 anyhow, and the difference between the two surveys has been caused by the time.

Referring to the conclusions in the case of the machinery, I adopt as the measure of damage to the hull the estimate first made, which, although made under adverse circumstances, seems to be supported as correct by the opinion of one of the then surveyors, and by one who assisted in making the last survey.

The claim of Samuel Rotan appears to be for work on the vessel in raising her, pumping mud and water out after she was lowered into the dock. No satisfactory reason, sufficient to charge the respondents with this expense, has been assigned. Why she was put in the water again after being raised on the railway, the witness frankly says, "I don't know." Upon the principle laid down in the former items, to wit, that if proper diligence had been used in repairs, this claim would not have accrued—it is disallowed.

It might be well to remark, that so far as is disclosed by the evidence, no repairs have yet been made to the vessel, but that she is now, and has been during the summer months, lying exposed and subject to other and further deterioration. If the respondents are liable for any of the additional expense caused by deterioration, are they not so liable until the boat shall have been repaired or some judicial order or decree made in the premises?

The next claim is for furniture of the boat, and the chief witnesses in this behalf are Seely, the engineer of the boat, and Parry, an expert.

Seely furnishes a list of the items on board, and Parry, from his practical knowledge, estimates the value of the articles on board such boats. This estimate he has produced, and although many articles may be highly estimated, still I am disposed to adopt the value placed on them, in the absence of testimony, on the part of respondents, as to the proper value.

This estimate is.....$252 81

The next claim is for work and labor performed by Reaney, Neaffie & Co., which, with wharfage, amounts to $367 60; the item of wharfage, being from July 18, 1856, to May 22, 1857, 302 days, $302.

If the ruling on the question of liability for deterioration be correct, then the principle would also apply to the charge for wharfage, and this would depend on the number of days required for repairing, of which there is no evidence. The libellant should not be held strictly to the number absolutely necessary for repairs, but should be allowed some latitude for making his necessary contracts, not only for repairs, but for launching, &c., and when this testimony is furnished, your commissioner prays leave to insert the amount in the schedule of reported damages. The amount of re-

pairs is $65 60, which amount is now reported, in the absence of contrary testimony, as proper damages, being for services therein mentioned.

The claim for demurrage was withdrawn by proctor for libellant, on the 24th September, instant.

The damages sustained by libellant are reported as follows:

For raising and towing	$515 00
For damage to machinery	910 00
Damage to hull	705 00
Furniture	252 81
Reaney, Neaffie & Co.	65 60
Wharfage	

Respectfully submitted:

CHAS. F. HEAZLITT,
Commissioner.

May 18, 1857.

The Palmetto.

Present, Mr. Kane, Mr. Henry.

Sur assessment.

Adjourned till Monday next at 4 p. m.

May 25th, 1857.

Present, Mr. Kane, Mr. Henry, Mr. Johnston.

Calvin H. Barker, being duly sworn, says:

I have followed the business of raising sunken vessels for the last five years; I raised the tug Bird at the request of Michael Molloy, the owner; I raised her in July, about the 19th of July; I delivered her at Reaney & Neaffie's; I was first spoken to about raising the vessel a few days after she was sunk; it was in the fall, either November or December, I don't recollect which; the ice was in the river; it was impossible, in my opinion, to do anything with her before I raised her, on account of ice; the ice lasted till the next March or April, or until the river opened in the spring; when Mr. Molloy spoke to me, he did not name any time when I was to raise her; his wishes were to get her up as soon as possible; I didn't get her up before July, because it was sunk in a bleak place, storm and wind; my bill for raising her was $500; I have not been paid; I took her after we raised her; I kept her one day, a piece above Reaney, Neaffie & Co.'s, until they prepared their dry dock, then I brought her there, and they took her off my hands. The steamboat Dolphin towed me from Red Bank, and the Mat. White towed me from the place I went, first to Reaney, Neaffie & Co.'s. It would be $10 for towage up; the second towage would be $5; they won't take hold of a boat, with a sunken boat between them, for less than that.

Cross-examined.

There was a memorandum, stating what I would do it for, furnished to Mr. Molloy, and they accepted it. (Mr. Johnston calls for contract.) There was no other charge for myself except $500; I had no other contract with them except that; I left this memorandum on Mr. Molloy's desk about three or four weeks after I went after the boat; I did not go down until July; I had other business that prevented me before that time; I just left another job to go to her; I was at that job about three weeks. Before that again I worked at a sloop just below the light-house. The one before that was at Catharine street; I was at that about ten days. The one at the light-house I did not succeed in getting up all, on account of the weather.

Mr. Henry:

I was five days employed in raising the Bird; I found her very soon, the next morning after I went down; it took ten days to raise the vessels at Catharine st., two weeks below the light-house; I received $500 for raising the canal boats at the wharf, of Mr. Jno. G. Dale, agent of the company; there were three and a half canal boats; they were loaded with coal, in about seven feet water, in sight at low water, two or three of them.

Re-examined.

The contract was made in June; Mr. Molloy called several times when I was at work at Catharine street. I think it was the next day Mr. Molloy called on me; I was then engaged on another job; the Bird was sunk in thirty-four feet; she was as near the middle of the river, between Red Bank and League island; she was said to be right in the channel, from those on shore. Her smoke-stack was gone; we didn't see it.

CALVIN H. BARKER.

Jacob G. Neaffie, being duly sworn, says:

I am one of the firm of Reany, Neaffie & Co., marine engine builders and machinists. The steam-tug Bird was brought to our works some time in July last; she was raised on our dry-dock and examined by me; I held a survey on her at Mr. Molloy's request; Mr. Joseph L. Parry united with me in the survey; the survey was made last Saturday, 23d instant; we reduced that survey to writing, and I have it now with me; as a general thing she was in bad condition; that is, I speak of machinery; our survey was on the boiler and machinery; it would take some $1,100 to put her in good running order, boiler and machinery alone.

Mr. Kane offers survey in evidence.

The boat has been in an exposed situation since she was raised, so that she has been deteriorating since that time. I would

estimate the deterioration since that time at about $200; it would not be beyond $250.

I have been engaged about 23 or 24 years in the construction, &c., of machinery.

Cross-examined.

Mr. Henry:

We done the repairs of the boat prior to the accident, and at that time she was in fair order; we built the engine; we build engines of that size for $2,400, new; the boiler must have been, as near as I can recollect, five or six years old; the expense of a new boiler to a vessel of that character would be about $1,000; that boiler I consider about half worn out, though it was in tolerably good repair at the time she went down; running all the time in fresh water, a boiler will last nine or ten years; it depends upon usage; we did all the repairs to the Bird, as a general thing.

I can't say how long before the accident our firm worked on the boiler; there had been some repairs done to her; the old bilge pump was lost; there was none in her when she came up to the shop; the rudder and post were bent; I don't know when it was done; the shaft of the wheel was corroded; the eccentrics and rod are also injured by corrosion; the boat being sunk, the machinery covered with mud, exposure to air afterwards made it liable to corrosion; the boiler was so affected by corrosion that there would have to be new tubes in it, I think; I think I saw the boat the same day she was brought to the wharf; I looked at her a day or two after she was put on the ways, and the water was got out; the corrosion took place both while the machinery was under the water and after it was taken out; the corrosion took place under the water, and the exposure tended to make it adhere more firmly, and cause it to be more difficult to repair. The propeller is submerged all the time; it becomes corroded when lying still, but while in action, the boat running, the current of water keeps it clean.

This propeller is made of cast-iron; I don't consider it injured; I have made no calculation for any injury to it; the damage to the shaft was by corrosion.

In repairing the machinery, that injured by corrosion will have to come out and go in the lathe, or new machinery be put in.

If that vessel had been repaired when she was raised out of the water it would make a difference of from $200 to $250.

The vessel requires a new piston, because the cylinder will have to be bored on account of the rust taking such deep hold of it.

The damage to this machinery was caused, to a certain extent, by the length of time she was allowed to remain under water. If she had been raised immediately and repaired, the bill would not have been more than one-half.

The repairs mentioned in the schedule will not make her almost

new; it will place her pretty much in the same condition as when she was run down; it would put her in good running order again.

I am acquainted with the value of steam-tugs, somewhat; we build new ones of the same character as the Bird for from $5,300 to $5,500. I recollect the boat Wm. Sprague, sold by us to Mr. Winsor; the Bird was the same class boat, cost as much money; I don't know if not more; she would class about the same; Mr. Winsor ought to have paid $5,500; he may have got it under the market price; I should not consider the Bird worth over $4,000 before the accident; she ought to be worth that when these repairs were made; I don't know that she would be worth more then, than she was at the time of accident; I estimated so as to make her in about the same condition.

With $400 spent on the boiler, it will now be almost equal to a new one; the tubes inside of the boiler would be better; the outside would not be as good.

JACOB G. NEAFFIE.

Sworn and subscribed, May 25, 1857.

CHAS. F. HEAZLITT,
U. S. Commissioner.

June 1, 1857.

Present, Mr. Kane, Mr. Henry.

Joseph L. Parry, sworn:

I am an engineer; have been in that business about 24 years; I held a survey on the tug Bird; I assisted Mr. Neaffie; that survey was on the 25th day of May, 1857. The object of the survey was to ascertain what it would cost to put the boiler and machinery in as good condition as before she was sunk; the amount we estimated was $1,161; my signature is to the paper hereto annexed, and that is the report of the survey made.

The tug, befor she was sunk, when in good running order—in as good as they usually keep these boats; I speak of the machinery.

Q. Supposing the boat to have been raised ten months previously to the time at which you held the survey, and during that period to have lain exposed to the weather, would you be able to form an estimate of the deterioration which she would undergo from such exposure?

I should estimate the depreciation of the engine and boilers from the time I first seen it, up to the time of survey, to be $250, about; I saw it when she was first raised.

Cross-examined.

I am a first-class engineer; I run a vessel and make machinery, either. I am now engaged on shore. I saw the Bird frequently before the collision, every day; I saw the boat within two weeks of

the collision; she was then in good order, such order as they generally keep them—in working order; I don't know whether I was in the engine-room within those two weeks; I can tell when I see a boat going whether she is in working order or not; I can almost say positively, I was in the room within those two weeks; the boiler was tolerably well worn; it had been repaired before, I don't know how long; but it was tight at that time; I know it by asking the fireman as to its condition at that time; I could see the outside; it is usual for me to make inquiries of the firemen as to their flues, &c.

A new boiler like that, ready to put on board the boat, would be worth about $950. The repairs are estimated at $410. These repairs are to be made principally to the flues; the damage to the flues was by oxydation. It occurs fastest after it is taken out of water.

The bilge pump on board the Bird before the collision was a good copper pump, with gearing attached for working it, and was worth $40; you can't get one for less.

JOSEPH L. PARRY.

Sworn to and subscribed, June 1, 1857.

CHARLES F. HEAZLITT,
U. S. Commissioner.

Theodore Birely, sworn:

I am a ship carpenter in this city, and have been so 15 or 16 years; I have recently held a survey on the tug Bird, at Reaney & Neaffie's works, about a week ago, I suppose May 22, 1857. I understood the object was to ascertain the condition of the vessel, and the amount it would take to repair her. Mr. Robert Lynn and Mr. Robert Craig assisted me; we reduced the result of our examination to writing; the amount was $821 and some cents; that is the paper annexed, marked B. I held a survey prior to that; Mr. Robert Lynn and Harman Vaughan, or Fisher, his partner, I forget which; that survey was the second day after she was brought up there by Mr. Barker; we estimated the repairs then at $705 or 6; the vessel then was not in a very good condition to make a survey; she was closed and swelled up with mud, so that it was not possible to see what it was until that was removed.

Cross-examined.

It would be necessary to take off the iron to get the mud out; you can't put iron on, after it is taken off once.

I am not positive who built the Bird; I think Mr. Cramp; I do not know how old she is. Incidentals $75, is very reasonable; the man that would take that, would get a good deal less than he could find them for.

THEODORE BIRELY.

Sworn to and subscribed, June 1, 1857.

CHAS. F. HEAZLITT,
U. S. Commissioner.

Cross-examination resumed.

The damage done to the vessel by sinking did not show itself until the plank was moved off the vessel; I suppose the hull of the vessel, when I first looked at her, was worth—I would have given, I can't tell—$5 or $600; that is a matter of opinion. There was one break, I don't remember whether on larboard or starboard side; a piece of keel was knocked off her; the greatest damage was caused by the mud, which would not have been in her, I suppose, if she had not been sunk.

Re-examined.

From the best estimate afforded me, I would have been willing to give $5 or $600 for the hull; I might alter my mind after closer examination.

THEODORE BIRELY.

Robert Craig, sworn:

Ship builder; I am now over 39 years of age; have been at the business ever since I was 17 years of age; I held a survey on the Bird, at Reaney & Neaffie's works, the week before last, I think the latter part; Mr. Robert Lynn and Mr. Theodore Birely assisted me. The object of that survey was to ascertain the amount of damages, and to ascertain what it would take to replace her in the same condition she was before; I had often seen her before, but never particularly examined her; she was in the habit of coming into our neighborhood very often. That survey amounted to $821, some dollars; that is my signature to paper B, and it would require that sum to put her in the same condition. There was one little item that I differed with the others a little; that was after I signed; it was the item of the iron sheathing; we never talked about the difference; but what we allowed there, it was not enough; I counted the sheets, and it would only pay for the material.

Cross-examined.

I think the Bird was near 6 years old; she is the second boat of that class built on this river; the difference is merely in the sharpness; I never measured her; I should think she was 60 feet long; a boat in that business should last 8 or 9 years, if properly built; she appears to have been built out of very good materials. The item $300, joiner's work, includes all, from the after bitts to the forecastle. I saw her immediately after she was raised; I did not hold a survey; I remember her condition, what we could see of her. On the port side, about midships, her plank-shear, bulwarks and rail, and two streaks of her wales were gone; stem head forward;

the house was not there; her pipes were gone. The estimate of $49 28, is for entirely new plank-shear; the present plank-shear is full of rents; particularly hard wood is liable to rents from exposure to the sun; pine is not affected so; the whole of the damage was not caused by the collision; the mud had collected up to the decks in every crevice; if the vessel had been put in repair forthwith, after she was raised, the damage would not be as much as now; the longer she lies exposed to the sun, the worse she will be. Two of the wales were carried off entirely, and in removing some of the fenders, the wales were torn so that it would be necessary to replace them; two wales all the way round would have to be removed; I don't think all this damage to the wales was caused by collision; the weight of that body of mud was very straining. A part of this cost, I should think, might have avoided if she had been repaired forthwith; perhaps one-third of that $45 might have been avoided, if she had been repaired forthwith; caulking to the same extent would not have been required; the expense for caulking is at least doubled; if she lies much longer, I would not like to do it for $50.

To the best of my judgment, the bill has been increased by not repairing at once upon raising; the hull alone from $140 to $150.

ROBERT CRAIG.

Sworn to and subscribed, June 1, 1857.

CHAS. F. HEAZLITT,
U. S. Commissioner.

Robert Lynn, sworn:

Shipwright; have been in a ship yard ever since I can remember; I began my apprenticeship when about fifteen years of age; I held a survey on the tug Bird at Reaney, Neaffie & Co.'s; Mr. Birely and Mr. Craig assisted, and the object was to see the damages sustained by a collision with the Palmetto and being sunk; I knew the Bird before the collision; the amount of our survey was $821 28; paper B is the survey; I remember holding a survey last fall on the same vessel with Mr. Birely; Mr. Birely and me were alone then, Mr. Vaughan came afterwards; the amount of that survey was $705; that vessel was full of mud; every place was well filled up; to get the mud off, we had to take some plank above and below; the plank-shear and the upper streaks were taken off.

Cross-examined.

We would either have the whole plank-shear off, or take the plank off the bottom.

The bill by the present survey has been increased by the length of time elapsed since raising; it has been increased $100 anyhow. The first survey was $705, and the difference between the two surveys is caused by the time that has elapsed between them.

I don't know how old the Bird is; she is rather old-fashioned to the boats we build now.

ROBERT LYNN.

Sworn to and subscribed, June 1, 1857.

CHAS. F. HEAZLITT,
U. S. Commissioner.

Mr. Kane produces, on call by Mr. Henry, the proposition to raise the Bird, signed C. H. Barker, marked C.

June 8, 1857.

Present, Mr. Kane.

Harmon Seeley, sworn:

I was on board the tug Bird at the time she was sunk, as engineer; the sinking I refer to was caused by the Palmetto; nothing was saved from the vessel at that time that I know of; she had some furniture on board, such as tools, crockeryware, knives and forks, tools about the engine; there were mooring-lines, tow-lines, lead-lines, and heaving-lines, cooking utensils and cooking-stove; they were complete, never used a great deal; I have made out a list of the articles, as near as my memory serves me; there are some articles which I have not put down, but all that I have put down were there; I made out this list myself; I was not assisted by any one in making out this list; I was requested by Capt. Molloy to make out a memorandum; he asked me to make out a list of all articles that were on board the boat; he did not mention any of the articles; I was all alone on Sunday, when I wrote them down just as my memory serves me.

HARMON SEELEY.

Sworn to and subscribed, June 8th, 1857.

CHAS. F. HEAZLITT,
U. S. Commissioner.

June 15, 1857.

Present, Mr. Henry and Mr. Kane.

Aaron Waters, being duly sworn, says:

I am book-keeper for Reaney, Neaffie & Co. I made this bill out, E. It was made from the books by me. It is a correct account.

(Mr. Henry declines to cross-examine, reserving exceptions to the items being chargeable as damages in this case.)

AARON WATERS.

Sworn to and subscribed, June 15, 1857.

CHAS. F. HEAZLITT,
U. S. Commissioner.

Samuel Rotan, being duly sworn, says:

I am a ship carpenter by trade; I am superintendent of the railway at Reaney, Neaffie & Co.'s, and have the privilege of working at vessels on it.

I have examined bill E; that work was actually performed by men under my charge.

Cross-examined.

There was 31 days' work on the Bird; we had to haul her up, and haul up on plank; we laid ways to haul her out.

We took plank off next the garboard streak; we took off two of the wale plank; two of the upper plank on the side of the vessel; we took her plank-shears off.

The Bird lay in the dock sunk; we took the water out; stopped the hole up; took her on the ways; then we laid ways to launch her from the railway over on the wharf; after we got her there we had to block her up, shore her up, so that we could remove the ways from under her, take them away. My bill includes taking some of the mud out of her; it includes the expense of pumping the water out of her. The charges by Reaney, Neaffie & Co. is not the same work. The Bird is about 60 feet long. When I was hauling her over on the ways I had about ten men; I had about five when we were shoring her up. I suppose I was at her six or seven days. I did not report any of my work to Reaney, Neaffie & Co. $2 37 is the usual price paid per day.

It was the neighborhood of seven days' work to take the water and mud out; she lay in the dock alongside of the wharf when we first commenced taking the mud out; then we hauled her up. She was twice hauled out on the railway; she was full to her decks the first time. Reaney, Neaffie & Co.'s men took the mud out of her; she was put in the water again; why, I don't know. She was first raised a day or two after she was brought up; it was in the neighborhood of 2½ months after the first time that she was raised again; she had mud and water in her again. My bill does not include any expenses for hauling out on the railway at all.

We generally repair vessels on the railway. Machinery is generally repaired on the dock, except when something special was to be done.

I think January 9, 1857, was about the time the work was done.

I suppose her hull alone could have been put in good order in about a week's time after she was taken out. She lies there out.

Re-examined.

Our railway runs into the water. The vessel was raised and the mud taken out of her. I believe they worked about as hard at that boat as they do generally; she was then lowered down into the water and then hauled up and transferred from the railway to the

wharf. The object in transferring her from the railway to the dock was to save expense; lying on the dock would cost $7 50 per day. The cost of lying at the wharf is, I think, $1 50 per day.

SAMUEL ROTAN.

Sworn to and subscribed, June 15, 1857.

CHAS. F. HEAZLITT,
U. S. Commissioner.

June 22, 1857.

Present, Mr. Henry.

Joseph L. Parry, being re-called, says:

I am familiar with the kind, quality, and extent of furniture required on a tug like the Bird. I have been engaged in fitting out tug-boats, and in running them.

Mr. Parry examines "memorandum" referred to by Mr. Seeley, and says:

Those articles are all needed on board the boat. In the estimate we made for repairing the engine we included some in this list; I know what is now on the boat pretty well, and have made a list of articles, none of which are included in the bill for repairs.

I am satisfied the things in this estimate (J. L. P.) was on board, and the estimate is quite low.

Mr. Henry:

The estimate J. L. P. is the usual furniture of a tug-boat; some of the estimates is for new tow lines, and mooring-lines are new.

The estimate for cooking-stove, &c., is for new; I don't recollect how long the tug was running; I don't know the state of the furniture before she was sunk; a good towing-line would last about two seasons.

I think the furniture would have sold for $252 81.

The tow-line I have estimated for would have been hard on to 100 fathom.

I can't say that I took notice of the tow-line of that boat; it is customary to have four lines for mooring.

I think the Bird had been running for about five years.

I consider $74 a low estimate; $24 for mooring-lines is lower than the other. We might make out to furnish the boat for that price.

If all these articles had been used for five years they might have been tolerably well worn; if the towing-line had been hard used for two seasons it would have been pretty nearly worn out; I have seen those articles on board the boat; I don't think they had depreciated 40 per cent.; I suppose that with ordinary wear and tear, the whole bill, except steel rollers and spy-glass, would depreciate about 25 per cent.; neither would the compass, tool-chest and water-cask (except by sun) depreciate.

I think it would cost all of my estimate to put the things on board.

JOSEPH L. PARRY.

Subscribed June 22, 1857.

CHAS. F. HEAZLITT,
U. S. Commissioner.

On behalf of respondent.

July 15, 1857.

Present, Mr. Henry, Mr. Kane.

Henry S. Maxwell, being duly sworn, says:

I am a steamboat engineer by profession; I remember the steamboat Bird, sunk by the collision with the Palmetto; I had conversation with the owners of the Bird about purchasing her; it was with the old gentleman in the first place; then, afterwards, I don't know if it was the same day, or a day or two afterwards, I saw the young gentleman, Michael; I was authorized by Captain Baker and Captain Willitts to go and see what I could purchase a small boat, for Boston; previously to that, in 1852, I was on board the Bird.

The conversation I refer to was in May, 1856—no! 1855, the May before the collision; the old gentleman asked $2,500 cash; the young gentleman asked $3,000 cash; he allowed the old gentleman had nothing to do with the sale.

Cross-examined.

I have been an engineer since 1851; I mean steamboat engineer; I am not now employed at this time; I have been in Mr. Murphy's employ, running from Baltimore to New York; they are small boats, screw boats; go through the canal.

I never owned or purchased a tug; I know of a good many tugs being sold; I could tell the price of some of them; one, the William Sprague, a new boat, was bought for $5,500, as I heard; Capt. Sloan, of the Transport, cost him $4,000. She has the same size engine as the Bird; I don't know about her hull; I can't tell the price of others.

HENRY S. MAXWELL.

Sworn to and subscribed, July 15, 1857.

CHAS. F. HEAZLITT,
U. S. Commissioner.

September 23, 1857.

Present, Mr. R. P. Kane.

Stephen Flanigan, being duly sworn, says:

I am an owner of tugs and vessels used for towing on the Dela-

ware river and bay. We own tugs of the ordinary size, and some large steam towing-vessels. The larger steam-vessels are owned by the Philadelphia Steam Towing and Transportation Company. Independently of the company, I am interested in ten boats; I have none quite so small as the Bird. I am familiar with the expenses and management of steam-tugs. I know the tug Bird; she was owned by Mr. Molloy, as I understood. From what I saw of her she had considerable work to do. Mr. Molloy is in that business.

Our busy season is fall and spring; the breaking up of winter is generally good season.

The river was closed in all January and February; did very little work in both months; did a little.

Q. At what would you estimate the average earnings of a boat such as the Bird during the months of December, 1855, March, April, May, June, and July, 1856.

I should think it very safe at $20 per day; leaving January and February out, I should average it at $20 to $25 per day.

Our boats have more power than the Bird. I have examined the returns of the earnings of my boats during those months, down to April, and I have come to my conclusion from comparisons with the Bird; in December, 1855, down to July, 1856, I had a boat of the same power as the Bird, called the Lilly.

The expenses of our boats are about $16 per day. I have always calculated Mr. Molloy's expenses as much less, how much I can't say.

By Commissioner:

The river was open in all of December, 1855; if closed, it was for a very few days; I don't think there was any ice; I can't recollect if there was floating ice; I don't remember when the river was first closed. After the river was closed there was no use for the small tugs; they were laid up nearly all of January and February; I speak of my own.

I don't remember how long the river remained closed; it was not entirely free from drift-ice until some time in March.

I have had some experience in raising canal boats; I should think it more difficult to raise boats while heavy ice was running; should not think it could be done.

I should think there would have been nothing to prevent the raising of the boat between the 1st of December and Christmas of 1855; I don't exactly recollect, but think there was not; after Christmas it was not practicable until March on account of the ice.

September 24.

Present, Mr. Henry.

As a general thing tugs don't run on Sundays—26 days to the month. The tug was not the class of boat to run in heavy ice.

We did the last job of towing on the 26th December, 1855; there was no ice prior to 20th December, 1855.

I should be satisfied with $1,500 a year as the earnings of the Bird.

If she was in good order, and five or six years old, I should think $2,500 enough for her; the Lilly cost me $4,200 new.

We keep captain, engineer, and cook on pay during the winter months, at about $150 monthly. We don't pay wharfage during winter months. That (the wages) would have to be paid out of the earnings of the tug during the next season.

(A.)

PHILADELPHIA, *May 25th*, 1857.

We, the undersigned, have examined the engine and boiler on steam-tug boat Bird, now on the ways at Reaney, Neafie & Co.'s wharf, report as follows:

Repairs to rudder and post	$20 00
Repairing and taking out shaft and wheel	25 00
Replacing wheel and shaft	15 00
Repairing eccentrics and rods	20 00
Repairing rock-shafts and arms	15 00
Repairing valves and stems, and throttle-valve	25 00
Repairing cylinder, taking down and replacing	35 00
New piston and packing	40 00
Repairing cross-head, connecting-rod, and new keys	30 00
Repairing force-pump plungers	10 00
Repairing exhaust-cock	5 00
New bilge pump	40 00
Repairing force-pumps and pipes	30 00
Repairing standing pipe	5 00
New crank-pin	10 00
Repairing, taking out and replacing holding-down bolts.	30 00
New steam-pipe	50 00
Repairing hand force-pump	15 00
New out-board exhaust-pipe	15 00
New tubes in boiler, and putting in the same	410 00
New smoke-stack, rods, &c	40 00
Hoisting out and replacing boiler	25 00
Repairing hand-gearing	15 00
New starting-bar	6 00
New shutters and grates for coal-bunkers	5 00
New escape-pipe for safety-valve	5 00
Repairing blow-out cock and handle	5 00
New signal-bell and rigging	20 00
Repairing half-stroke cock and handle	10 00
New tallow-cock	15 00

New steam-whistle	20 00
New fire and engine tools	50 00
Incidentals	100 00
	$1,161 00

JOSEPH L. PARRY,
JACOB G. NEAFIE.

(B.)

PHILADELPHIA, *May* 22*d*, 1857.

We, the undersigned, have examined the steamer Bird at Reaney, Neafie & Co.'s works, and estimate the cost of putting her in repair, as follows:

Plank on bottom	$20 00
Caulking all over	50 00
Re-sheathing with iron	40 00
Piece of keel	15 00
Wales	45 00
Upper fender	36 00
Fender-iron, and putting on	25 00
Plank shear	49 28
New rail	20 00
Stanchions and kleets	20 00
Painting	60 00
Joiner work	300 00
Steering fixtures	25 00
Canvass	16 00
Cleaning out	25 00
Incidentals	75 00
	$821 28

Railway hire and repairs to engine not included in the above, and wharfage.

THEODORE BIRELY,
Ship Builder.
ROBERT LYNN,
ROBERT CRAIG.

(C.)

PHILADELPHIA, *June* 12*th*, 1856.

To Mr. MICHAEL MOLLOY.

SIR: I will undertake to find the steam-tug Bird, where she is sunk in the neighborhood of Red Bank, and raise her, boat and

boiler, attached for five hundred dollars; for hull of boat detached from boiler, four hundred dollars; and for boiler separate from hull, two hundred and fifty dollars; any towing down and up river, or to get ashore with sunken craft, to be furnished by the owners of the Bird. Please let me know what you decide upon as soon as convenient, that I may take the advantage of the weather, as soon as the job would come in turn, among other jobs on hand.

Very respectfully, yours,

C. H. BARKER.

MEMORANDUM.

List of articles on board of the steam-tug boat Bird when run down, December 1st, 1855.

Tools belonging about the Engine.

2 reversing-bars.
2 monkey-wrenches, large and small one.
12 steel friction-rollers.
Set of wrenches.
Pair of crank-pins, brass boxes.
3 large files and rules.
6 cole-chisels and hammer.
Pinch-bar and socket-wrench.
Adz and hand-saw.
1 large sledge-hammer.
Packing yarn and canister of oil.
Small oil can and *squirt* can.
3 small lamps and one large brass globe lamp.
Marlinspike and spyglass.
2 Britannia lamps, caster.
3 stools, 2 feather pillows.
Crockery ware sufficient for the crew.
Cooking utensils and stove, complete.
1 wood-saw and market basket.
2 tool-chests and water-casks.
1 compass and awning.
4 lines for mooring the boat.
1 large tow-line.
Lead-line and heaving-line.
3 buckets, 2 brooms, 1 scrub-brush.
Boat-hook and poles.
Flag-staff colors.
2 hoes, 1 slice-bar and clinker-hook.
2 shovels, tube-brush.
2 fur hats and frock-coat.
1 overcoat and 3 pair of trowsers.
1 pair of boots and cap.

(E.)

STEAMER BIRD AND OWNERS,

To REANY, NEAFIE & Co., *Dr.*
Penn Works, Philadelphia.

1856.			
July 18.	To 3 hours' work, copper pipes	$0	60
21.	To 19½ do taking mud out of boat	3	90
22.	To 37¼ do do do	7	45
23.	To 30¾ do do do	6	15
24.	To hauling up on railway	15	00
	To 3 lay days, at $7 50	22	50
Aug. 28.	To 1½ days' work pumping out boat	3	00
Dec'r 15.	To 3½ do raising up boat	7	00
1857.			
May 22.	To 302 days' wharfage, from July 24, 1856, to date	302	00
		$367	60

May 22, 1857.

(F.)

STEAMER BIRD AND OWNERS,

To SAMUEL ROTAN, *Dr.*

To 31 days' work, at $2 37½	$73	63
To 9½ do at $2	19	00
	$92	63

Philadelphia, January 9th, 1857.
Received payment.

(J. L. P.)

Memorandum of articles on board steam tow-boat Bird, Dec. 1st, 1855.

12 cast-steel friction rollers	$24	00
3 large files	2	25
2 scoop shovels	2	50
1 four-fold rule	1	00
1 adz	2	50
1 hand-saw	1	50
1 wood-saw	1	25
1 marlinspike		75
1 spyglass	9	00
1 ball of packing yarn	1	50
1 oil can and oil	3	50
3 small lanterns	2	25

1 signal lantern	3 50
3 Britannia lamps	2 00
1 caster and bottles	1 25
3 stools	3 00
2 feather pillows	3 00
Crockeryware	5 00
1 cooking-stove and apparatus complete	25 00
1 market-basket	75
2 tool chests	5 00
1 water-cask	2 50
1 compass	5 00
1 awning	6 00
4 lines for mooring	24 00
1 large tow-line	76 00
1 lead-line	1 25
1 heaving-line	2 00
1 hand-lead	1 00
3 buckets	2 50
2 brooms	50
1 paint-scrub	56
1 boat-hook and staff	1 50
3 setting-poles	3 00
1 flag-staff	1 50
1 set of flags	25 00
	$252 81

District Court of the United States.—In Admiralty.

MOLLOY
vs.
THE PALMETTO.

The respondent excepts to the report of the commissioner to assess the damages in the above case, for the following reasons:

1st. Because the commissioner, by his said report, has allowed the sum of $65 60 on account of Reaney & Neaffie's bill, the same being expenses incurred in the examination, &c., of the said Bird, and not for repairs.

2d. Because the said commissioner has allowed the full value of the furniture of the said Bird at cost prices, amounting to $252 81, and has not allowed for deterioration from use and age, amounting, according to the evidence, to 20 or 25 per cent.

3d. Because the said commissioner has allowed the sum of five hundred and fifteen dollars for raising and towing the said Bird, no repairs being subsequently made on the said vessel.

MORTON P. HENRY,
Proctor for Respondent.

Sept. 26, 1857.

In the District Court of the United States in and for the eastern district of Pennsylvania.—In Admiralty.

In the matter of the commissioner's report on "The Palmetto."

The libellant excepts to the report of the commissioner in this:

1. First.—That he has not reported damages for total loss of the vessel as prayed for in the libel.

2. Second.—That he has not reported as an item of damage the amount of wharfage accruing since the raising of the vessel.

3. Third.—That he has not reported damages for demurrage.

4. Fourth.—That he has reported that the claim for demurrage on the part of the libellant was withdrawn by the libellant's proctor on the 24th of September.

5. Fifth.—That he has erred in not allowing the claim of Samuel Rowtan.

R. P. KANE, *Proctor*.

Afterwards, to wit, on the second day of October, A. D. 1857, the cause again came on to be heard on the said report, and the exceptions thereto, and having been argued by the respective proctors, and due deliberation being thereon had, it is ordered, adjudged, and decreed by the court, that the said exceptions be dismissed, and that the said report be in all things confirmed. Decree accordingly.

Whereupon the said respondent prays leave to appeal from the decree aforesaid to the next circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, and the same is allowed upon security being given.

UNITED STATES,
Eastern District of Pennsylvania.

I certify the foregoing to be a true and faithful copy of the record and proceedings of the district court of the United States in and for the eastern district of Pennsylvania, in a certain plea, civil and maritime, therein lately depending between Michael Molloy, jr., libellant, and the steamship Palmetto, Henry Windsor, bailee, respondent.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of said court, at Philadelphia, this nineteenth day of October, A. D. 1857, and in the eighty-second year of the independence of the said United States.

[L. S.]

THOMAS L. KANE,
Clerk Dist. Court U. S.

Whereupon, afterwards, to wit, on the twenty-second day of October, A. D. 1858, all and singular the matters being duly considered before the honorable the judges of the said circuit court, and the arguments of the several proctors being heard, the court do order, adjudge, and decree in favor of the libellant, Michael

Molloy, jr., for the amount of damages assessed by the court below, with costs and interest from the date of the decree of the district court, to wit, for the sum of two thousand two hundred and forty-eight dollars and forty-seven cents, ($2,448 47,) with costs and interest from October 2d, 1857.

And thereupon, afterwards, to wit, on the twenty-third day of October, A. D. 1858, the said respondents pray leave to appeal from the said decree to the Supreme Court of the United States, at the city of Washington, which said appeal is allowed on security to be entered.

And thereupon, afterwards, to wit, on the twenty-ninth day of October, in the year of our Lord 1858, security was entered by the appellants, as follows, to wit:

C. C. U. S., E. D. of Penn'a. No. 5, October session, 1857.

MICHAEL MOLLOY
vs.
THE STEAMSHIP PALMETTO.

Know all men by these presents, that we, Henry Winsor, of the city of Philadelphia, merchant, Payson Crowell, of the same place, merchant, and Obed Baker, of Boston, shipmaster, are held and firmly bound unto Michael Molloy, junior, of the city of Philadelphia, in the sum of six thousand dollars lawful money of the United States, to be paid to the said Michael Molloy, junior, his heirs, executors, administrators or assigns, to which payment well and truly to be made, we do bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals respectively, and dated this twenty-ninth day of October, in the year of our Lord one thousand eight hundred and fifty-eight.

Whereas Henry Winsor, Edward Whitney, and Alfred Winsor, trading as Sprague, Soule & Company, and William Sprague, Edward S. Tobey and Obed Baker, have lately appealed to the Supreme Court of the United States, from the decree of the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit, made and pronounced in a certain plea, civil and maritime, sur collision, therein lately depending between the said Michael Molloy, junior, appellee, and the steamship Palmetto, and the said Henry Winsor, Edward Whitney and Alfred Winsor, trading as Sprague, Soule & Company, William Sprague, Edward S. Tobey, and Obed Baker, claimants, respondents and appellees: Now the condition of this obligation is such, that if the said appellants, as aforesaid, shall well and truly prosecute their said appeal with effect, and answer all such costs as, upon an affirmance of the said decree of the said circuit court,